

Federal Court



Cour fédérale

Date: 20260414

Docket: T-1346-21

Citation: 2026 FC 495

Vancouver, British Columbia, April 14, 2026

PRESENT: The Honourable Mr. Justice Manson

BETWEEN:

FEDERATION OF ASIAN CANADIANS TORONTO

Plaintiff

and

**ASIALICIOUS HOLDINGS INC.,
FEDERATION OF CHINESE CANADIANS IN
MARKHAM, AND CHINESE CUISINE &
HOSPITALITY ASSOCIATION OF CANADA**

Defendants

JUDGMENT AND REASONS

I. Introduction

[1] This action and counterclaim involve competing claims to the trademark and trade name ASIALICIOUS and related variants used in association with Asian food and cultural events and restaurant-promotion programming in the Greater Toronto Area (GTA). The Federation of Asian Canadians Toronto (FACT) pleads passing off under paragraphs 7(b) and 7(c) of the *Trademarks*

Act, RSC 1985, c T-13, s 7, and at common law against the Federation of Chinese Canadians in Markham (FCCM), Asialicious Holdings Inc. (Asialicious Holdings), and the Chinese Cuisine & Hospitality Association of Canada (CCHAC). The Defendants deny liability, and Asialicious Holdings and FCCM counterclaim and allege that FACT's use of ASIALICIOUS constitutes passing off against them.

[2] FACT's trademark registrations are not in issue and accordingly nor are the issues of possible remedies under sections 19 or 20 of the *Trademarks Act*.

[3] For reasons that follow, FACT succeeds in part. FACT has established passing off under paragraph 7(b) of the *Trademarks Act* against the Defendants in relation to CCHAC and FCCM's commencement of public use of ASIALICIOUS in February 2020 and subsequent alleged related uses and Asialicious Holdings' use of ASIALICIOUS as a trade name, although FACT has not established a case under paragraph 7(c) of the *Trademarks Act* on the evidentiary record before me. The counterclaim by FCCM and Asialicious Holdings is dismissed because they have not proved that ASIALICIOUS had become used as a trademark or had acquired any distinctiveness with respect to their services before FACT began using ASIALICIOUS.

II. Background

[4] FACT is a not-for-profit corporation incorporated in Ontario on June 3, 2019. Benny Cheung is its current President. The evidence shows that FACT was created in connection with the organization of a recurring Asian food and cultural event in Scarborough that began in 2019.

[5] FCCM is a not-for-profit corporation incorporated in Ontario on May 22, 1992. Dr. Ken Ng is its chairman and a director. FCCM has operated food-related programming for many years, including the Taste of Asia events.

[6] Asialicious Holdings is an Ontario corporation incorporated in Ontario on February 5, 2020. Dr. Ng is its director and the only person materially connected to it on this record.

[7] CCHAC is a federally incorporated corporation established in November 2016. Catherine Hou is its founder and president. CCHAC worked with FCCM in relation to the February 2020 ASIALICIOUS Festival and later alleged restaurant-promotion activities.

[8] Wan Ling Leung (also known as Nicole Leung) was a director and officer of FACT. Edbert Joaquin provided various services, including grant-writing services to FACT for payment. Both have also volunteered with FCCM, and Mr. Joaquin has worked for FCCM in the past.

[9] A timeline of key events follows:

- (a) August 2019: FACT held the ASIALICIOUS Carnival event at Woodside Square in Scarborough, Ontario;
- (b) February 2020: CCHAC and FCCM held the ASIALICIOUS Festival event;
- (c) February 10, 2020: Asialicious Holdings filed a Canadian trademark application for ASIALICIOUS (No. 2,013,685);
- (d) February 13, 2020: Wan Ling Leung filed two Canadian trademark applications for ASIALICIOUS (No. 2,011,324 and No. 2,358,105);

- (e) March 30, 2020: FACT issued a cheque to pay the invoice Ms. Leung submitted related to Canadian trademark applications No. 2,011,324 and No. 2,358,105;
- (f) September 2020: FACT held the ASIALICIOUS™TO event;
- (g) on or about April 6, 2021 (recorded May 18, 2021): Wan Ling Leung assigned application No. 2,011,324 to FACT;
- (h) March 24, 2024: Asialicious Holdings' Canadian trademark application for ASIALICIOUS (No. 2,013,685) was abandoned;
- (i) December 12, 2025: FACT's Canadian trademark application ("TMA") for ASIALICIOUS (No. 2,011,324) was registered (TMA 1,366,402);
- (j) February 17, 2026: FACT's Canadian trademark application for ASIALICIOUS (No. 2,358,105) was registered (TMA 1,292,236); and
- (k) in each of the years 2021 to 2025: FACT has held ASIALICIOUS Carnival events.

[10] While not before the Court in this action, FACT's ASIALICIOUS trademark registrations cover the following:

(a) TMA 1,366,402:

TRADEMARK DETAILS/DÉTAILS DE LA MARQUE DE COMMERCE

ASIALICIOUS

TRADEMARK TYPE/TYPE DE MARQUE DE COMMERCE

Standard Characters

SERVICES:

35 (1) Promotional services relating to events and programs showcasing the diversity of Canadian cuisine; promoting food and dining experiences and encouraging public patronage of local restaurants.

41 (2) Organization of series of festivals and events across Canada annually to promote food, restaurants, the hospitality industry, food culture, culinary artisans, chefs, cooking competitions and competitive eating; organization of culinary events for cultural purposes, specifically showcasing the diversity of Canadian cuisine.

(b) TMA 1,292,236:

TRADEMARK DETAILS/DÉTAILS DE LA MARQUE DE COMMERCE

ASIALICIOUS

TRADEMARK TYPE/TYPE DE MARQUE DE COMMERCE

Standard Characters

SERVICES:

41 providing multicultural entertainment exhibitions namely dancing, singing and musical performances.

[11] The Defendants have not commenced expungement proceedings nor challenged the validity of either of FACT's ASIALICIOUS trademark registrations.

[12] In their counterclaim, Asialicious Holdings and FCCM have raised breach of confidence, breach of fiduciary duty, and misappropriation of a business concept, which are not appropriately before this Court.

III. Issues

[13] The issues are:

1. As of the relevant times, did ASIALICIOUS (or a relied-upon materially similar variant) have goodwill and distinctiveness in the relevant market(s), such that it indicated the source of the services of FACT or of FCCM/Asialicious Holdings?
2. If there was contemporaneous use of ASIALICIOUS in the same market, what is the effect on distinctiveness?
3. Did any Defendant (FCCM, Asialicious Holdings, CCHAC) direct public attention to its services in such a way as to cause or be likely to cause confusion in Canada, at the time it commenced doing so, between its services and FACT's services, that caused actual or potential damage attributable to the misrepresentation/confusion, contrary to paragraph 7(b) and/or paragraph 7(c) of the *Trademarks Act*?
4. Did FACT direct public attention to its services in such a way as to cause or be likely to cause confusion in Canada, at the time FACT commenced doing so, between its services and the services of FCCM/Asialicious Holdings, that caused actual or potential damage attributable to the misrepresentation/confusion, contrary to paragraph 7(b) and/or paragraph 7(c) of the *Trademarks Act*?
5. If liability is established, what remedies are appropriate?

IV. Fact Witnesses

A. *Plaintiff's Fact Witnesses*

(1) Benny Cheung

[14] Benny Cheung is the founder and President of FACT. She led the organization of FACT's 2019 ASIALICIOUS Carnival and 2020 ASIALICIOUSTMTO programming. She was the central witness on FACT's adoption of the ASIALICIOUS name, the organization and promotion of the 2019 event, the later ASIALICIOUSTMTO restaurant-promotion initiative, and FACT's understanding that the trademark filings arranged through Ms. Leung were made on FACT's behalf.

[15] Ms. Cheung testified that Councillor Cynthia Lai asked her to help create an annual community event in Scarborough and that FACT was created to host that event. Ms. Cheung testified that Councillor Lai suggested the ASIALICIOUS name in early 2019, based on the Summerlicious and Winterlicious events that take place in Toronto, during initial discussions about the event. Ms. Cheung described a 2019 press conference that FACT hosted, the media attendance, the use of banners and posters, the program book, the advertising campaign, and the attendance-counting process for the August 2019 ASIALICIOUS Carnival. She also testified that she later asked Ms. Leung to arrange a trademark filing for FACT and paid the invoice she received for that service.

[16] Ms. Cheung further testified that, in early 2020, someone asked her whether she was running an event called ASIALICIOUS Festival in February 2020, and that someone later sent her promotional material for that event and asked whether it was her event. Ms. Cheung testified that she also saw negative social media commentary related to CCHAC and FCCM's 2020 ASIALICIOUS event before FACT's 2020 ASIALICIOUS activities took place that year. Ms. Cheung cited no documentary evidence for her confusion points. However, on the core matters of FACT's adoption and use of the ASIALICIOUS trademark, her evidence was coherent and matched the documents that are in the record.

[17] On cross examination, Ms. Cheung was credible and her evidence was consistent with her evidence-in-chief.

(2) Ivan Wan

[18] Ivan Wan is a director of FACT and has been involved with FACT from the beginning of the organization. His evidence addressed the execution and marketing of FACT's ASIALICIOUS activities from 2019 onward, including FACT's ASIALICIOUS Carnival beginning in 2019 and FACT's ASIALICIOUSTMTO restaurant program beginning in 2020.

[19] Mr. Wan testified that he was closely involved in marketing FACT's ASIALICIOUS Carnival and ASIALICIOUSTMTO events. He identified billboard advertising, including in Dundas Square, for ASIALICIOUSTMTO 2020, social media banners, restaurant window decals, website screenshots, and later marketing reports. He explained that ASIALICIOUSTMTO was a fixed-menu restaurant event running from 2020 until about two years before the trial hearings,

while ASIALICIOUS Carnival continues as FACT's annual carnival event. He also testified that the ASIALICIOUS name was developed with input from Councillor Lai, that it was used throughout the 2019 ASIALICIOUS Carnival, and that the 2019 event was well attended. Mr. Wan testified that, later in 2020, FACT had to clarify on the RedFlagDeals.com online forum that a criticized percentage-discount ASIALICIOUS event was not FACT's ASIALICIOUS event, but was CCHAC and FCCM's ASIALICIOUS event.

[20] Some of the marketing reports Mr. Wan identified were from 2021, 2023, 2024, and 2025 and therefore did not establish recognition of FACT's use of ASIALICIOUS prior to February 2020. Still, Mr. Wan's evidence was useful on FACT's 2019 and 2020 ASIALICIOUS activities, the nature of FACT's services, the prominence of the ASIALICIOUS brand, and the manner in which consumers encountered it.

[21] Mr. Wan was a credible witness and on cross-examination his evidence was consistent with his evidence-in-chief.

(3) Nicole Leung

[22] Nicole Leung is a former director and former corporate secretary of FACT. She was involved with FACT when the relevant events occurred, and she is also Mr. Joaquin's spouse. Her evidence focussed on the administrative steps taken for FACT's incorporation, FACT's trademark filings, and her continued involvement with FACT's ASIALICIOUS activities through 2025.

[23] Ms. Leung testified that Ms. Cheung asked her to incorporate FACT and to complete administrative tasks relating to FACT's 2019 ASIALICIOUS Carnival event. She testified that Ms. Cheung told her that Councillor Lai came up with the name ASIALICIOUS. Ms. Leung further testified that in 2020, Ms. Cheung instructed her to file trademark applications for ASIALICIOUS, that Mr. Joaquin helped her use an online filing service called Corporation Centre to do the filing, and that FACT paid the invoice she submitted for the filing services. Ms. Leung explained that, when she later realized that the trademark applications had been filed in her own name rather than FACT's name, she signed a trademark assignment of each of the applications to FACT without dispute because it had always been her intention that FACT own the trademark applications. Ms. Leung's testimony was consistent with Ms. Cheung's evidence and with the payment-and-assignment sequence shown in the documents in evidence.

[24] On cross-examination, Ms. Leung testified that FACT was created for the purpose of creating an event in Scarborough to connect Asians and promote Asian culture. Ms. Leung was a credible witness and on cross-examination her evidence was consistent with her evidence-in-chief.

(4) Edbert Joaquin

[25] Edbert Joaquin is a professional fundraiser, festival consultant, and grant writer, particularly for not-for-profit organizations. He previously worked with FCCM, later provided services to FACT, and invoiced through a company he owns with Ms. Leung.

[26] Mr. Joaquin testified that he was introduced to FCCM around 2004, became a director of FCCM until he resigned in 2009, and then provided services for various FCCM activities, including Taste of Asia, until about 2018. He also testified that he helped with FACT's incorporation and Ms. Leung's ASIALICIOUS trademark filings, that he had never before filed a trademark application using the Corporation Centre online platform, and that he entered Ms. Leung's name for the trademark applications because she was the person acting for FACT. He testified that FACT paid the invoice for those trademark filing services.

[27] The evidence at trial included a text message exchange between Mr. Joaquin and Emily Ng, Dr. Ng's late wife and a senior figure within FCCM, in which Mr. Joaquin communicated that Councillor Lai had approached him about organizing a festival at Woodside Square in 2019.

[28] Mr. Joaquin also testified that Dr. Ng was his family doctor until about 2021 and that he invited Dr. Ng to his events, including probably FACT's 2020 ASIALICIOUS Carnival event.

[29] While the Defendants asserted that Mr. Joaquin's earlier association with FCCM meant that he must have known that FCCM already owned the ASIALICIOUS trademark or concept, Mr. Joaquin testified that he had not heard of FCCM using ASIALICIOUS while he worked there. On cross-examination, Dr. Ng was unable to say that Mr. Joaquin was untruthful when Mr. Joaquin said he had not heard of FCCM using ASIALICIOUS while he worked there.

[30] Mr. Joaquin was a credible witness and his evidence on cross-examination was consistent with his evidence-in-chief.

B. *Defendants' Fact Witnesses*

(1) Dr. Ken Ng

[31] Dr. Ken Ng is the chairman of FCCM, he oversees its projects, and is the sole person involved with Asialicious Holdings. His evidence addressed FCCM's asserted earlier use of ASIALICIOUS, CCHAC and FCCM's February 2020 ASIALICIOUS Festival, his understanding of Mr. Joaquin's past role, and later alleged CCHAC activities related to ASIALICIOUS.

[32] Dr. Ng testified that he first used the ASIALICIOUS name somewhere between 2013 and 2015 in discussions with other FCCM members, and that a team led by Sylvia Cai was developing a restaurant discount-card concept around 2014 or 2015. He testified that FCCM used the ASIALICIOUS name on discount cards, and that tens of thousands of discount cards were produced and distributed at the Taste of Asia event, the FCCM Centre, Market Village, and Langham Square. He also testified that, after February 26, 2015 emails referring to "Asianlicious" (with an "n"), a "FCCM/Taste of Asia Card", and "FCCM cards", there was an internal FCCM decision to use ASIALICIOUS.

[33] The difficulty is that Dr. Ng did not produce any actual card, photograph, copy, or other document with respect to those asserted discount cards. He did not know whether the February 26, 2015 email referring to a "FCCM/Taste of Asia Card" had an attachment, though the email itself states "Please see draft for FCCM/Taste of Asia Card". Dr. Ng was unsure which years the alleged discount cards were distributed. He repeatedly testified that staff or volunteers did the

actual work and that he oversaw rather than directly handled these matters. He was also unable to be precise about Mr. Joaquin's status and role with FCCM at different times.

[34] Dr. Ng did give clear evidence that FCCM and CCHAC publicly ran the February 2020 ASIALICIOUS Festival and that a related media event was held in early February 2020 at the Markham Civic Centre, which was attended by Markham's Mayor, councillors, and restaurant owners. On that narrow point, his evidence was generally consistent with Ms. Hou's. However, on the critical issue of the Defendants' pre-August 2019 public use and public recognition of ASIALICIOUS, his evidence was imprecise and unsupported by documents. Dr. Ng also testified that CCHAC later had booths at Taste of Asia events in 2022 to 2025 and distributed discount cards or promoted restaurant members under ASIALICIOUS, again with no credible evidence of such use.

[35] Dr. Ng's credibility is eroded by:

- (a) his inability to be precise about the dates or even years in which many specific actions or events took place;
- (b) his apparent limited knowledge of what staff and volunteers directly did; and
- (c) his lack of certainty about who held particular roles at particular times.

[36] Dr. Ng's evidence is particularly weak on the proposition that Mr. Joaquin knew about a FCCM ASIALICIOUS program between 2013 and 2015. I am not persuaded that Dr. Ng had a reliable basis to speak to what Mr. Joaquin knew. Indeed, on cross-examination, Dr. Ng testified

that Mr. Joaquin would know better than he would about Mr. Joaquin's role when acting as director or manager of FCCM.

[37] Dr. Ng testified that Mr. Joaquin invited him to FACT's inaugural ASIALICIOUS Carnival in August 2019 as well as in 2020, and that Dr. Ng visited FACT's ASIALICIOUS Carnival event in 2020.

[38] Dr. Ng was a credible witness with respect to FCCM's longstanding Taste of Asia events and the occurrence of the February 2020 ASIALICIOUS Festival, but his evidence about FCCM's alleged earlier ASIALICIOUS use was at best highly questionable and of limited value.

[39] Dr. Ng confirmed under cross-examination that he was not aware of the abandonment of Asialicious Holdings' ASIALICIOUS trademark application until January 2026 and that, until the day he testified at trial, he was unaware that FACT held registered ASIALICIOUS trademarks.

(2) Catherine Hou

[40] Catherine Hou is the founder and president of CCHAC. Ms. Hou testified that CCHAC has over 2,000 restaurant and hospitality members. She has volunteered with FCCM's Taste of Asia activities for many years and worked with FCCM on the February 2020 ASIALICIOUS Festival.

[41] Ms. Hou testified that she had heard the name ASIALICIOUS “a long time ago” with FCCM and that small events existed before 2019. However, on cross-examination she testified that before 2019 she had only heard FCCM members talking about the name. She also said that the ASIALICIOUS name came from FCCM board meetings, but then admitted on cross-examination that she was not on the FCCM board and did not attend FCCM board meetings. She testified that she heard the ASIALICIOUS name from Dr. Ng and Mr. Joaquin, though she was unsure whether Mr. Joaquin was a board member or a hired worker.

[42] Ms. Hou testified that CCHAC used ASIALICIOUS for the February 2020 ASIALICIOUS Festival, and that CCHAC later produced hard-copy ASIALICIOUS coupon books in 2021 and 2022, promoted them through social media and at Taste of Asia events, and later continued to mention ASIALICIOUS publicly at Taste of Asia events in 2023 and 2024. However, she did not produce copies of those coupon books, and she acknowledged that she had not given them to counsel. Additionally, her evidence about 2022 statistics related to an asserted 2022 Taste of Asia ASIALICIOUS event was internally inconsistent.

[43] Ms. Hou’s conflicting testimony reduces her credibility. I do not accept her evidence as reliable proof of pre-August 2019 public recognition of ASIALICIOUS or use by FCCM. An alleged trademark without use is non-existent.

V. Analysis of FACT's Passing Off Claim and FCCM/Asialicious Holdings' Counterclaim

A. *Principles of Passing Off*

[44] The foundation of any valid trademark is that it must be distinctive of a single traders' goods or services. If there is contemporaneous use, then it may erode that distinctiveness.

[45] Passing off exists at common law and is codified in paragraph 7(b) of the *Trademarks Act*, which prohibits a party from directing public attention to their goods, services, or business "in such a way as to cause or be likely to cause confusion in Canada", at the time they commenced doing so, between their business and another's. The first elements of inquiry the Court must make is whether the plaintiff has goodwill in a distinctive trademark and whether the defendant's conduct amounts to a misrepresentation likely to cause confusion as to source (*Kirkbi AG v Ritvik Holdings Inc*, 2005 SCC 65 [*Kirkbi*] at paras 39, 66-68). A plaintiff must prove ownership of a valid and enforceable trademark, whether registered or unregistered (*Nissan Canada Inc v BMW Canada Inc*, 2007 FCA 255 at para 14).

[46] Paragraph 7(c) of the *Trademarks Act* prohibits passing off "other goods or services as and for those ordered or requested". The absence of trading activity is fatal to a 7(c) claim, as there must be trade involving trademarks for there to be a violation of paragraph 7(c) of the *Trademarks Act* (*Positive Attitude Safety System Inc. v Albian Sands Energy Inc.* (FCA), 2005 FCA 332 at para 34; *MacDonald et al v Vapor Canada Ltd.*, 1976 CanLII 181 (SCC), [1977] 2 SCR 134 at 152-153). Paragraph 7(b) of the *Trademarks Act* has an express timing element, confusion being assessed at the time the alleged infringer commenced directing attention in their

goods and/or services in such a way as to cause confusion. Paragraph 7(c) of the *Trademarks Act* does not have the same statutory timing language as paragraph 7(b) because 7(c) is tied to substitution events.

[47] As the Supreme Court affirmed in *Kirkbi*, for a passing off action to succeed, a plaintiff must meet the three prongs of the test set out by the Supreme Court of Canada in *Ciba-Geigy Canada Ltd v Apotex Inc*, 1992 CanLII 33 (SCC), [1992] 3 SCR 120 [*Ciba-Geigy*]:

- (a) there must be reputation or goodwill established in the trademark as used with the goods or services;
- (b) there must be a deception of the public due to a misrepresentation; and
- (c) there must be actual or potential damage to the trademark owner.

[48] In assessing whether a plaintiff has established goodwill and whether a defendant's conduct is likely to deceive, the Court considers the perspective of the relevant consumers, including both direct and indirect consumers (*Ciba-Geigy*). However, a trademark can have its distinctiveness negated by another party's contemporaneous use in the Canadian marketplace, and an allegation of passing off does not preclude a party from relying on the alleged infringing use to challenge distinctiveness (*Sadhu Singh Hamdard Trust v Navsun Holdings Ltd.*, 2019 FCA 10 [*Navsun*] at para 15).

B. *Established Reputation or Goodwill, Distinctiveness, and Priority*

[49] The Court must first determine if the ASIALICIOUS trademark is distinctive of one of the parties as being the source of the services provided. To do that, the first task is to identify the

relevant services and market. The record shows three centrally relevant public events or programs:

- (a) FACT's August 2019 ASIALICIOUS Carnival in Scarborough;
- (b) CCHAC/FCCM's February 2020 ASIALICIOUS Festival based in Markham, promoted across the GTA, and featuring participating restaurants across the GTA; and
- (c) FACT's September 2020 ASIALICIOUSTMTO restaurant promotion program with participating restaurants across the GTA and subsequent continued use of ASIALICIOUS with its Carnival from 2021 to 2025 and with ASIALICIOUSTMTO up until two years ago.

[50] The events and services are not identical in every detail, but they are very closely related. Each parties' use of ASIALICIOUS involved Asian food promotion, event programming, public attendance or participation, restaurant or food vendor participation, sponsorship, and promotion in the GTA.

[51] The relevant consumers were not limited to members of the public that attended or participated in the parties' events; they also included participating restaurants, food vendors, sponsors, and suppliers. The relevant geographic market was the GTA. FACT's 2019 event occurred in Scarborough, but evidence shows that it was promoted more broadly and drew media attention beyond Scarborough. CCHAC and FCCM's February 2020 ASIALICIOUS Festival event was promoted primarily from Markham, but involved restaurants and media publicity extending to Toronto, Vaughan, Brampton, and other parts of the GTA. FACT's 2020

ASIALICIOUS™TO program was sponsored by the City of Toronto and was operated and promoted in the GTA. There was significant consumer overlap.

[52] FACT adopted the following ASIALICIOUS-based design mark, used with their ASIALICIOUS Carnival events starting in 2019:



[53] FACT adopted the following ASIALICIOUS-based design mark, used with their ASIALICIOUS™TO program starting in 2020:



[54] CCHAC/FCCM adopted the following ASIALICIOUS-based design mark, used with their 2020 ASIALICIOUS Festival event:



[55] The first question is whether, by February 2020, ASIALICIOUS had acquired source significance for FACT in the relevant market for the ASIALICIOUS Carnival for Asian food and cultural events and related promotion services.

[56] On that question, FACT succeeds.

[57] FACT's public-facing use began with their promotion of their August 2019 ASIALICIOUS Carnival. Ms. Cheung testified that ASIALICIOUS was used for FACT's first 2019 event and that FACT held a press conference at the Congee Town in Scarborough before the event. She identified photographs showing media members with cameras, banners, posters, and repeated use of the ASIALICIOUS Carnival design mark together with the FACT design mark. She also testified that FACT engaged two marketing companies, Sung Marketing Inc. and K.Z. Marketing Inc. to promote the 2019 ASIALICIOUS Carnival event, and advertised on television, radio, and newspapers. Ms. Cheung testified that 2,000 or 3,000 program books were printed and distributed at the event.

[58] That evidence was corroborated in material respects. The record contains the media and government invitations identifying FACT as the 2019 ASIALICIOUS Carnival event organizer. It contains photographs of stage banners and other materials bearing the ASIALICIOUS design mark alongside the FACT design mark at the 2019 ASIALICIOUS Carnival and the related press conference. Additionally, Mr. Wan testified that the ASIALICIOUS name was used throughout the 2019 event and that the event was well attended. The photographs in the record show a substantial public event, not a small private gathering.

[59] Ms. Cheung testified that approximately 25,000 people attended the three-day 2019 ASIALICIOUS Carnival event, based on click counters and wristband distribution at the event. In his testimony, Mr. Wan could not confirm the exact number of attendees, but he supported the general proposition that attendance was substantial, that click counters were used, that wristbands were distributed to attendees, and that the crowds were dense during performances.

While I do not treat the 25,000 figure as a precise number of attendees, I do accept that FACT's 2019 ASIALICIOUS Carnival event drew significant public attendance and exposure.

[60] FACT also proved that ASIALICIOUS was used as a trademark in association with the services FACT provided as early as 2019 and consistently thereafter. ASIALICIOUS was the dominant branding on banners, posters, program materials, and related promotions for the 2019 ASIALICIOUS Carnival. While it is not necessary for the relevant consuming public to know the sources of goods or services by name (*Target Event Production Ltd. v Paul Cheung and Lions Communications Inc.*, 2010 FC 27 at para 190, citing *Ray Plastics Ltd. v Dustbane Products Ltd.* (1994), 1994 CanLII 1241 (ON CA), 57 CPR (3d) 474 at paragraph 5; *Oxford Pendaflex Canada Ltd. v Korr Marketing Ltd. et al.*, 1982 CanLII 45 (SCC), [1982] 1 SCR 494 at 503), FACT's ASIALICIOUS-based design mark for its Carnival appeared together with FACT's identifying design mark on invitations, posters, and banners, which linked the 2019 ASIALICIOUS Carnival event to FACT as the source and organizer of the Carnival.

[61] By August 2019, FACT's use of ASIALICIOUS as a trademark for its services associated with multicultural entertainment exhibitions and the organization of festivals to promote food, restaurants, the hospitality industry, and food culture, had occurred. The question is whether ordinary consumers in the relevant GTA market, encountering Asian food and cultural event services promoted under ASIALICIOUS, would understand that trademark to indicate FACT as the single source. On this record, the answer is yes.

[62] The Defendants argue that FCCM had used ASIALICIOUS earlier and that FACT's use of ASIALICIOUS therefore lacked distinctiveness or priority. I do not accept that position based on the evidence before the Court.

[63] The evidence of alleged earlier FCCM use of ASIALICIOUS before its 2020 ASIALICIOUS Festival is, at best, suspect and not credible and certainly does not constitute use as a trademark. It consists mainly of Dr. Ng's recollection that ASIALICIOUS discount cards were discussed and used somewhere between 2013 and 2015, and FCCM internal emails from February 26, 2015 referring to "Asianlicious" (with an "n"), a "FCCM/Taste of Asia Card", and "reward card user sign up forms and FCCM cards (if can produce some)". The emails are not enough. One states, "Please see draft for FCCM/Taste of Asia Card" and "If we do not use Asianlicious, we can perhaps call it Taste of Asia on the road". No attachment to that email showing the actual card that may have been used is in evidence. Another email states, "Please review this form to be used to recruit business to your community. We shall distribute this at the Huadu dinner event which may have some business owners attending". The Defendants overstate what these emails show, including by asserting that they show promotion cards were printed in 2015 for the Huadu dinner. The emails show, at most, internal naming options under discussion. They do not prove that ASIALICIOUS, as opposed to "Asianlicious" or some other option was used publicly in the marketplace, or any use that would establish FCCM's rights to the trademark ASIALICIOUS prior to FACT's 2019 ASIALICIOUS Carnival. Internal discussion, contemplation, or planning of a name does not establish any goodwill or reputation in the ASIALICIOUS trademark nor does it constitute use of a trademark.

[64] Dr. Ng's oral evidence does not fill that gap. While the Defendants' Statement of Defence pleads that "Taste of Asia and Asialicious have been part of FCCM's cultural program since 2003", when cross-examined, Dr. Ng confirmed that what FCCM had been doing since 2003 was operating the Taste of Asia festival. Dr. Ng testified that tens of thousands of ASIALICIOUS cards were produced and distributed, but he had no card, no photograph, no copy, and no reliable recollection of when those cards were distributed, beyond saying he believed 2015 was one year. Dr. Ng acknowledged that staff did the work and he could not identify other documents showing FCCM's ASIALICIOUS use before 2020. His evidence on this issue was of limited, if any, value.

[65] Ms. Hou's evidence is even less helpful on the point of prior FCCM use. She contradicted herself about whether FCCM pre-2020 ASIALICIOUS use existed as events or only as discussions, and she had no documents to support any pre-2020 public use of ASIALICIOUS by FCCM. Her evidence does not establish prior use or any goodwill in the ASIALICIOUS trademark associated with FCCM.

[66] While the Defendants' Statement of Defence also pleads that CCHAC and FCCM's 2020 Asialicious Festival "had been planned since 2018", both Dr. Ng and Ms. Hou testified that the event was planned in response to the COVID-19 pandemic's effect on local restaurants, demonstrating conflicting timelines.

[67] There is no credible evidence whatsoever of purported FCCM ASIALICIOUS use prior to CCHAC and FCCM's use in 2020 with their ASIALICIOUS Festival. Both Dr. Ng and Ms.

Hou's testimony of purported earlier use is not credible. The Defendants' prior use defence rested entirely on oral assertions that the ASIALICIOUS name had been in use within FCCM since as early as 2003, without producing a single flyer, poster, photograph, email, or any other material bearing the word ASIALICIOUS from any date prior to August 2019.

[68] The Defendants also relied on the fact that FCCM had longstanding goodwill in Taste of Asia. That does not establish any goodwill in ASIALICIOUS; ASIALICIOUS is a completely different trademark. Whatever goodwill FCCM built over decades under the Taste of Asia name resides in that name. The services may overlap, but the issue is whether FCCM had developed any reputation and goodwill in ASIALICIOUS itself. The record does not show that ordinary consumers or any relevant public associated ASIALICIOUS with FCCM as a source before FACT's August 2019 use of ASIALICIOUS with their ASIALICIOUS Carnival.

[69] The Defendants further suggested that because Mr. Joaquin had worked with FCCM, FACT's adoption of ASIALICIOUS drew on pre-existing FCCM use. The credible evidence is to the contrary. Mr. Joaquin denied knowledge of FCCM using ASIALICIOUS while he worked there, and Dr. Ng could not reliably say what Mr. Joaquin knew. Indeed, Dr. Ng admitted that he could not say that Mr. Joaquin was not telling the truth. Mr. Joaquin and Ms. Leung's earlier association with FCCM does not reliably show either of them had any knowledge of alleged ASIALICIOUS use by FCCM before CCHAC and FCCM's 2020 ASIALICIOUS Festival. There is no reliable evidence of FCCM's pre-2020 use of ASIALICIOUS, or if contemplated for use by FCCM, any public use that could reliably establish that FCCM had any prior rights in the trademark.

[70] I therefore reject the counterclaimants' core premise. FCCM and Asialicious Holdings have not established that ASIALICIOUS had acquired any goodwill and distinctiveness in their favour before FACT began using the trademark in August 2019.

[71] That conclusion substantially resolves the counterclaim. Without prior reputation and goodwill in the ASIALICIOUS trademark attributable to FCCM and/or Asialicious Holdings, they cannot show that FACT's use of the ASIALICIOUS trademark in August 2019 with its ASIALICIOUS Carnival or its ASIALICIOUSTMTO use in September 2020, and subsequent use of ASIALICIOUS in association with its Carnival or ASIALICIOUSTMTO program thereafter, resulted in any misrepresentation by FACT. FACT has shown uncontradicted evidence of prior commercial use of the ASIALICIOUS trademark commencing in August 2019. The counterclaim must be dismissed.

C. *Concurrent Use*

[72] I must still address concurrent use, whether even if FACT had initial goodwill and a distinctive ASIALICIOUS trademark, the evidence of contemporaneous use by both FACT and FCCM in 2020 and thereafter results in ASIALICIOUS not being able to indicate a single source of the ASIALICIOUS services, and therefore cannot support a valid passing off claim by FACT.

[73] There was overlapping marketplace exposure by CCHAC and FCCM once they publicly launched their February 2020 ASIALICIOUS Festival and later alleged CCHAC ASIALICIOUS promotions, while FACT continued with its annual ASIALICIOUS Carnival and ASIALICIOUSTMTO program. However, the key question under paragraph 7(b) of the

Trademarks Act is whether the Defendants directed public attention to their services in a manner likely to cause confusion at the time they commenced doing so. By early February 2020, FACT had already publicly launched and promoted ASIALICIOUS in August 2019, prior to CCHAC and FCCM's use of ASIALICIOUS with their ASIALICIOUS Festival in 2020.

[74] *Navsun* confirms that contemporaneous use can negate distinctiveness. However, the evidence must show that by the relevant time the trademark had ceased to indicate a single source. That has not been shown here.

[75] The evidence is to the contrary. FACT's 2019 use of ASIALICIOUS was substantial and public. CCHAC and FCCM's February 2020 use of ASIALICIOUS came later, in the same market and for closely related services, under the ASIALICIOUS trademark. That later overlap explains confusion. It does not show that FACT's use of ASIALICIOUS lacked distinctiveness when CCHAC and FCCM commenced their alleged infringing use with their 2020 ASIALICIOUS Festival, which is the only use of ASIALICIOUS by CCHAC and FCCM supported by any credible evidence before the Court.

[76] Nor is there any geographic separation between the parties' use of ASIALICIOUS. Scarborough and Markham are both within the GTA. The parties' services were promoted to overlapping GTA consumers. The Defendants' own evidence was that their 2020 program extended across the GTA. FACT's later ASIALICIOUSTMTO programming confirms the natural overlap in audience and service category. There was no meaningful market separation.

D. *FACT's Claim Arising from the Defendants' February 2020 ASIALICIOUS Festival*

(1) Misrepresentation / Likelihood of Confusion

[77] The next question to be addressed is misrepresentation and likely confusion. Here again, FACT succeeds against the Defendants.

[78] CCHAC and FCCM's February 2020 public use of ASIALICIOUS with their 2020 ASIALICIOUS Festival is not disputed. Dr. Ng and Ms. Hou testified to a media event at Markham Civic Centre in early February 2020, to press releases, to posters, and to media coverage including from Global News, CTV News, the Toronto Sun, and OMNI. Dr. Ng testified to exposure in the GTA, including in Markham, Vaughan, Mississauga, and Brampton, where Mayors would attend various restaurants to promote CCHAC and FCCM's 2020 ASIALICIOUS Festival. The record shows that CCHAC and FCCM publicly used ASIALICIOUS in relation to a 2020 Asian food and restaurant-promotion event and related publicity.

[79] CCHAC and FCCM's use of Festival and FACT's use of Carnival in association with ASIALICIOUS does not detract from the likelihood of confusing use of ASIALICIOUS in association with an Asian food and cultural event. Both operated in the GTA. Both involved restaurants or food vendors, public attendance, promotion, and an Asian food and culture theme. The ordinary consumer and relevant public as identified above could readily infer a likelihood of affiliation, sponsorship, or expansion from one to the other.

[80] While the evidence of actual confusion is modest, it nevertheless exists. Ms. Cheung testified that someone asked her whether the February 2020 ASIALICIOUS Festival was her event and later sent her promotional material asking the same question. Mr. Wan testified that FACT saw public commentary criticizing “the 2020 Asialicious event” before FACT’s own 2020 events and programming had occurred, and that FACT paid for clarifying posts on the RedFlagDeals.com online forum because the criticized percentage-discount offers were not FACT’s offering but were instead CCHAC and FCCM’s offering. Documentary evidence showing relevant posts on the RedFlagDeals.com online forum is in the record.

[81] The documentary support of actual confusion is limited. However, passing off under paragraph 7(b) of the *Trademarks Act* does not require extensive proved instances of actual confusion where likely confusion is otherwise strong. Here, the use of ASIALICIOUS with the overlap in services, the common geographic market, and the timing all point to likely confusion as to source, sponsorship, or affiliation.

[82] I therefore find that when CCHAC and FCCM commenced public use of ASIALICIOUS in February 2020 with their ASIALICIOUS Festival, they directed public attention to their services in a manner likely to cause confusion with FACT’s existing ASIALICIOUS trademark. That satisfies the misrepresentation element of the paragraph 7(b) claim.

[83] I address Asialicious Holdings separately as a Defendant. It filed a trademark application for ASIALICIOUS on February 10, 2020, which is now abandoned. Dr. Ng testified that he instructed the filing because FCCM was conducting large-scale press releases and intended

future events. Further, Dr. Ng testified on discovery that Asialicious Holdings was incorporated with the intention of expanding the Defendants' ASIALICIOUS program and testified at trial that Asialicious Holdings was mistakenly identified as a defendant in a 2022 Statement of Claim in the Ontario Superior Court of Justice that was purportedly related to a FACT ASIALICIOUS Carnival event. While the February 2020 public event was advanced on the evidence as a FCCM/CCHAC initiative, Asialicious Holdings' use of ASIALICIOUS as a trade name is also confusing in a manner that satisfies the misrepresentation element of FACT's paragraph 7(b) claim.

[84] FACT also pleaded paragraph 7(c) of the *Trademarks Act*. I would not grant relief under that provision. The evidence does not show that the Defendants passed off their services "as and for those ordered or requested". There is no substitution case here. Consumers were not shown to have ordered a FACT service and received a Defendant's service instead. The wrong proved is source confusion in the marketplace, not substitution.

(2) Actual Damage or Likelihood of Damage

[85] While the issue of whether FACT has, or will likely, suffer damage or injury to its reputation or goodwill as a result of the Defendants' impugned activities is conceptually distinct from the issue of the quantum of damages (A Kelly Gill, Fox on Canadian Law of Trade-marks and Unfair Competition, 4th ed (Toronto: Thomson Reuters, 2002) (loose-leaf updated to Release 9, December 2021) at § 4:69), actual or potential damages cannot be presumed, and there must be evidence proving them (*Cheung v Target Event Production Ltd.*, 2010 FCA 255 [Cheung] at para 24; *BMW Canada Inc. v Nissan Canada Inc.*, 2007 FCA 255 at para 35;

PharmaCommunications Holdings Inc. v Avencia International Inc., 2009 FCA 144 at paras 6-12). Use of an owner's trademark may cause the owner to suffer an actual loss of control over its trademark, and such loss is sufficient to ground the third component of the tripartite test for passing off (*Cheung* at para 28).

[86] FACT did not prove diversion in any measurable sense. There is no evidence of lost restaurant participants, lost sponsors, or lost attendees attributable to the Defendants' activities. FACT's 2019 and 2020 financial statements do not establish causation, especially given the onset of the COVID-19 pandemic during that period. No reliable inference about lost revenue can be drawn.

[87] The evidence of reputational harm is also limited. Ms. Cheung testified about negative social media commentary before FACT's 2020 events, and Mr. Wan testified about the RedFlagDeals.com forum posts and FACT's efforts to clarify ASIALICIOUS event difference. That evidence supports marketplace confusion, but not a real monetary loss.

[88] Even so, the third element is met. Once FACT had acquired goodwill in ASIALICIOUS, CCHAC and FCCM's commencement of use of the trademark for closely related services in the same market caused FACT to lose exclusive control over that goodwill. That is the harm recognized in *Cheung* at paragraph 28. It is also evident on this record that FACT responded to public confusion. The damage element is satisfied.

[89] The damage element is satisfied as for Asialicious Holdings as well. Asialicious Holdings' commencement of use of ASIALICIOUS as a trade name in 2020 caused FACT to lose exclusive control over FACT's goodwill in the ASIALICIOUS trademark. As noted above, Dr. Ng testified at trial that Asialicious Holdings was mistakenly identified as a defendant in a 2022 Statement of Claim in the Ontario Superior Court of Justice that was purportedly related to a FACT ASIALICIOUS Carnival event.

[90] FCCM and Asialicious Holdings also pleaded, in substance, that FACT copied a "model" or "concept" associated with Taste of Asia. That submission has no merit in this action.

[91] The result on liability can be stated in brief:

- (a) FACT proved that ASIALICIOUS had acquired reputation and goodwill as used with FACT's services in the relevant GTA market by February 2020;
- (b) CCHAC and FCCM then commenced or engaged in public-facing use of ASIALICIOUS in a manner likely to cause confusion with FACT's services, and Asialicious Holdings' commenced use of ASIALICIOUS as a trade name in a confusing manner; and
- (c) the Defendants' conduct caused at least potential damage through loss of control over FACT's goodwill in the ASIALICIOUS trademark.

[92] FACT therefore succeeds under paragraph 7(b) of the *Trademarks Act* against the Defendants. FACT does not succeed under paragraph 7(c) of the *Trademarks Act*.

E. *FCCM/Asialicious Holdings' Counterclaim*

[93] As stated above, the counterclaim of FCCM and Asialicious Holdings is dismissed.

VI. Remedies

[94] The relief must be tailored to the wrong proved. This case is not about FACT's registered ASIALICIOUS rights under sections 19 and 20 of the *Trademarks Act*; it is about passing off proved on this record in relation to multicultural entertainment exhibitions and the organization of festivals to promote food, restaurants, the hospitality industry, and food culture in the GTA under the ASIALICIOUS trademark.

[95] Proceedings brought under section 7 of the *Trademarks Act* can result in the Court granting relief, including by way of injunction, recovery of damages or profits, and disposal of offending materials in connection therewith (*Trademarks Act*, s 53.2(1)).

A. *Injunction / Delivery Up*

[96] To obtain a permanent injunction, a party is required to establish: (1) its legal rights; (2) that damages are an inadequate remedy; and (3) that there is no impediment to the court's discretion to grant an injunction (*Google Inc. v Equustek Solutions Inc.*, 2017 SCC 34 at para 66).

[97] Those requirements are met. FACT proved its legal right in the form of protectable goodwill in the ASIALICIOUS trademark at the relevant time and proved passing off under paragraph 7(b) of the *Trademarks Act*. Damages are inadequate because the central injury is loss of control over the trademark's goodwill and the risk of recurrent confusion. The record shows that the CCHAC and FCCM's ASIALICIOUS use may have continued after their February 2020 ASIALICIOUS Festival event. Ms. Hou testified to hard-copy ASIALICIOUS coupon books in 2021 and 2022 and CCHAC's continued public mention of ASIALICIOUS in 2023 and 2024 at the Taste of Asia events of those years. Dr. Ng testified that CCHAC continued to have a booth at Taste of Asia events in 2022 to 2025 with discount cards and restaurant promotion, and he also testified that he may revisit Asialicious Holdings' ASIALICIOUS trademark filing after the litigation. There is therefore a sufficient risk of future confusion absent injunctive relief.

[98] The injunction must nevertheless be narrow. I will permanently enjoin the Defendants, and those acting under their direction or control, from using ASIALICIOUS or any materially similar variant, in association with multicultural entertainment exhibitions and the organization of festivals to promote food, restaurants, the hospitality industry, and food culture, restaurant-promotion programs, coupon-book or discount-card programs, and directly related event-promotion services in the GTA, in a manner likely to cause confusion with FACT's services.

[99] Further, I permanently enjoin Asialicious Holdings from using ASIALICIOUS as a trade name. Indeed, Dr. Ng testified on discovery that Asialicious Holdings was incorporated with the intention of expanding the Defendants' ASIALICIOUS program and testified at trial that Asialicious Holdings was mistakenly identified as a defendant in a 2022 Statement of Claim in

the Ontario Superior Court of Justice that was purportedly related to a FACT ASIALICIOUS Carnival event. Asialicious Holdings cannot continue its use of ASIALICIOUS as a trade name due to resulting confusion.

[100] I do not order delivery up or destruction. Delivery up depends on identification of offending materials and necessity to make injunctive relief effective. The record does not identify specific materials presently in circulation or establish that such relief is necessary. CCHAC pleads that the “Asialicious Festival” webpage was deleted; FACT pleads continuing social media presence and ongoing use by CCHAC. There is no evidence in the record regarding whether and for how long CCHAC’s materials related to the February 2020 ASIALICIOUS Festival remained accessible online. However, if there is any continued use of ASIALICIOUS online by the Defendants counter to this injunction, it must be discontinued.

B. Damages / Accounting of Profits

[101] On damages, FACT does not advance a quantified claim for damages. Its financial statements do not permit attribution of any loss to the Defendants’ impugned activities. The evidence that FACT spent some marketing effort to distinguish its activities from CCHAC and FCCM’s 2020 ASIALICIOUS Festival event shows inconvenience and some reputational concern, but not a measurable loss.

[102] An accounting of profits is also not warranted. No financial record enabling attribution of profits to the Defendants’ impugned activity is in evidence. Indeed, the record contains no financial records relating to CCHAC and FCCM’s 2020 ASIALICIOUS Festival or their

subsequent alleged ASIALICIOUS activities, or financial records relating to Asialicious Holdings.

[103] The remaining question is whether nominal damages should be awarded. In a passing off action that is not an action for infringement of any registered trademarks, where the plaintiff has not provided any evidence to support any particular quantum of losses suffered, if any, by reason of the activities of the defendant, nominal damages may be based on an estimate of losses including an amount sufficient to serve as a deterrent to others contemplating similar activities (*Decommodification LLC v Burn BC Arts Cooperative*, 2015 FC 42 [*Decommodification*] at paras 5-6, 14).

[104] This is such a case. FACT proved a legal wrong and proved actual or potential damage in the form of loss of control over its goodwill in the ASIALICIOUS trademark, including modest evidence of instances of actual confusion. However, the record does not support substantial compensatory damages. A modest nominal award is therefore appropriate. In *Decommodification*, the plaintiffs asked for \$25,000.00 and Justice Hughes allowed \$10,000.00 in damages given that, while the plaintiffs had not provided any evidence to support any particular quantum of losses suffered, they had suffered some damages and a deterrent was warranted (*Decommodification* at para 14).

[105] I fix nominal damages at \$5,000.00, payable by the Defendants jointly and severally. That amount recognizes the need for a limited deterrent, while remaining proportionate to the lack of evidentiary record on quantifiable harm and some Defendants' not-for-profit status.

C. *Aggravated, Punitive, or Exemplary Damages*

[106] I do not award aggravated, punitive, or exemplary damages.

[107] Punitive and exemplary damages are awarded against a defendant in exceptional cases for malicious, oppressive and high-handed misconduct that offends the Court's sense of decency (*Best Brains, Inc. v Priyadharishini Balasingam (Best Brains Tutors)*, 2024 FC 2089 at para 44, citing *Whiten v Pilot Insurance Co.*, 2002 SCC 18 [*Whiten*] at para 36; *Driving Alternative Inc v Keyz Thankz Inc.*, 2014 FC 559 at para 68). Punitive and exemplary damages are not compensatory in nature, but are rather a punishment or a deterrent (*Whiten* at para 36; *Clear Sky Enterprises Limited v 564649 Alberta Ltd.*, 1998 CanLII 7797 (FC) at para 5).

[108] The Defendants' conduct was wrongful in the passing off sense that I have found, but the record does not establish the kind of exceptional misconduct required for punitive or aggravated relief.

VII. Costs

[109] Costs generally follow the event. FACT succeeded on the principal liability issue against the Defendants for passing off under paragraph 7(b) of the *Trademarks Act*, and FACT defeated the counterclaim brought by FCCM and Asialicious Holdings.

[110] FACT seeks costs, including:

- (a) costs of the proceeding on a substantial indemnity basis with respect to the passing off claim;
- (b) full indemnity costs or a lump sum award with respect to the counterclaim;
- (c) assessment of costs awarded in favour of the Plaintiff by the Court's Order of March 10, 2026 in respect of the Defendants' failed application to add Sylvia Cai as a witness;
- (d) a lump sum costs award, in the alternative or in addition, reflecting the volume of unnecessary work generated by the Defendants' conduct;
- (e) in the event the Court is satisfied that Rule 404 of the *Federal Courts Rules*, SOR/98-106, is engaged, an order that costs or a portion thereof be payable personally by defence counsel.

[111] FACT submits that the complexity and duration of the litigation justify costs at the high end of Column 3 of Tariff B. The litigation spanned over four years, involved multiple case management conferences, interlocutory motions, examinations for discovery of six witnesses, and a five-day trial.

[112] FACT's primary basis for seeking elevated costs is the Defendants' conduct throughout this proceeding, which FACT submits significantly increased the cost and duration of the litigation. The Defendants' conduct formed a consistent pattern throughout the proceeding. Indeed, at the Trial Management Conference of February 19, 2026, the Court directed that all outstanding court orders be complied with immediately, stated that any further missed deadlines

would attract costs of \$5,000.00 per day, and acknowledged that the Plaintiff reserved its right to bring the full compliance record to the Court's attention at the costs stage.

[113] The Defendants' relevant conduct and context from FACT's submitted full compliance record follows:

- (a) pre-litigation non-responsiveness from April 2021 to June 2021;
- (b) post-pleadings silence from January 2022 to November 2022 and the need for case management due to lack of responsiveness;
- (c) discovery scheduling issues from April 2023 to August 2023 and a lack of cooperation by the Defendants;
- (d) change of representative dispute and discoveries in January 2024:
 - (i) further Court intervention was required due to the Defendants' inability to confirm discovery dates;
 - (ii) after 14 months of no objection to Ivan Wan as FACT's discovery representative, Defendants' counsel wrote on January 2, 2024, demanding that Benny Cheung be substituted;
 - (iii) while the Plaintiff's response rejected this demand, documenting that Defendants' counsel had been on notice of Mr. Wan's role since October 2022 without ever raising any objection, to avoid any further delays, the Plaintiff then accommodated the request and agreed to have Benny Cheung testify, who required an interpreter at additional cost to the Plaintiff;
- (e) transcript non-payment leading to compressed undertakings timeline from February 2024 to April 2024;
- (f) examinations of Ms. Leung and Mr. Joaquin in 2024:
 - (i) the Defendants insisted on examining Ms. Leung and Mr. Joaquin for discovery, generating

substantial collateral litigation including scheduling disputes, refusals motions, and a striking motion;

(ii) at trial, the Defendants filed no read-ins from Ms. Leung or Mr. Joaquin's transcript and made no substantive use of either examination;

(iii) Ms. Leung's transcript appeared in the e-trial system only on the morning of Day 4 of trial, without prior notice or production to the Plaintiff, a matter that the Plaintiff raised before the Court that morning;

(g) Trial Record preparation non-response and late amendments from October 2025 to November 2025;

(h) Joint Book of Documents and last-minute additions on the filing deadline on February 20, 2026:

(i) FACT served a draft Joint Book of Documents to the Defendants by February 13, 2026, however Defendants' counsel provided his clients' version of the Joint Book of Documents on the morning of the February 20, 2026 deadline;

(ii) on February 20, 2026, the Defendants then made successive additional demands right up to the 4:30 pm deadline: requesting the inclusion of FACT productions not previously flagged, producing FCCM Document 27 for the first time, and requesting further additions at 3:50 pm;

(i) settlement offer served and withdrawn following litigation threats from January 2026 to February 2026, during which FACT withdrew its settlement offer on February 13, 2026, following the Defendants' non-response to the settlement offer and baseless show cause motion threat;

(j) pre-trial deadline failures from February 2026 to March 2026:

(i) the Defendants failed to file the Agreed Statement of Facts, Witness List, and Proposed Read-ins by the Court's February 13, 2026 deadline, resulting in a Trial Management Conference on February 19, 2026;

(ii) at the February 19, 2026 Trial Management Conference, the Court directed that any further

missed deadlines would attract costs of \$5,000.00 per day;

(iii) on February 20, 2026, the Plaintiff received the Defendants' last-minute Joint Book of Documents additions (referenced in (h) above), and the Defendants' proposed read-ins from the examination of FACT, resulting in the Plaintiff having one week to review the transcripts and provide qualifications by the February 27, 2026 deadline to exchange qualifications;

(k) last-minute witness addition on March 6, 2026:

(i) Defendants' counsel filed a letter with the Court seeking to introduce Sylvia Cai as a new witness at 1:26 AM on Friday, March 6, 2026, the last business day before trial starting on Monday, March 9, 2026;

(ii) the Plaintiff responded to the Defendants' request on the morning of March 6, 2026;

(iii) the Court's direction on March 6, 2026 denied the Defendants' request, and an order refusing the application followed, dated March 10, 2026, in which costs of the Sylvia Cai application were awarded in favour of the Plaintiff.

[114] Plaintiff's counsel asked the Court to consider granting relief under Rule 404 of the *Federal Courts Rules* and while Defendants' counsel did repeatedly fail to comply with timing requirements as issued by the Court and as reasonably requested by Plaintiff's counsel, I do not find it appropriate to invoke relief under Rule 404.

[115] The Court may award increased costs pursuant to the Tariff, and has discretion to depart from the Tariff, especially where it considers an award of costs according to the Tariff to be

unsatisfactory (*Consorzio del Prosciutto di Parma v Maple Leaf Meats Inc.*, 2002 FCA 417 at paras 9-10).

[116] The Plaintiff submitted a bill of costs under Column 3 of Tariff B with fees in the amount of \$80,640.00, and disbursements in the amount of \$19,861.52. In my discretion, I find certain of the preparation costs, travel costs, and interpreter costs either too high or unnecessary and award fees in the amount of \$50,000.00 and disbursements in the amount of \$16,730.31.

[117] In these circumstances, FACT is entitled to:

- (a) costs assessed in accordance with the upper end of Column 3 of Tariff B, as set out above, in the amount of \$66,730.31; and
- (b) in addition, a lump sum costs award of \$5,000.00, reflecting the volume of unnecessary work for the Plaintiff generated by the Defendants' conduct.

[118] FCCM, CCHAC, and Asialicious Holdings shall pay those costs jointly and severally.

VIII. Conclusion

[119] FACT has proved its claim against FCCM, CCHAC, and Asialicious Holdings under paragraph 7(b) of the *Trademarks Act*.

[120] FACT has not established a claim under paragraph 7(c) of the *Trademarks Act*.

[121] FCCM and Asialicious Holdings' counterclaim is dismissed.

[122] The Defendants are permanently enjoined, and so are those acting under their direction or control, from using ASIALICIOUS or any materially similar variant, in association with multicultural entertainment exhibitions and the organization of festivals to promote food, restaurants, the hospitality industry, and food culture, restaurant-promotion programs, coupon-book or discount-card programs, and directly related event-promotion services in the GTA, in a manner likely to cause confusion with FACT's services. Asialicious Holdings is permanently enjoined from using ASIALICIOUS as a trade name.

[123] FCCM, CCHAC, and Asialicious Holdings shall pay FACT nominal damages in the amount of \$5,000.00, jointly and severally.

[124] FCCM, CCHAC, and Asialicious Holdings shall pay FACT its costs jointly and severally as follows:

- (a) costs assessed in accordance with the upper end of Column 3 of Tariff B, as set out above, in the amount of \$66,730.31;
- (b) in addition, a lump sum costs award of \$5,000.00, reflecting the volume of unnecessary work for the Plaintiff generated by the Defendants' conduct.

JUDGMENT in T-1346-21

THIS COURT'S JUDGMENT is that:

1. FACT has proved its claim against FCCM, CCHAC, and Asialicious Holdings under paragraph 7(b) of the *Trademarks Act*.
2. FACT has not established a claim under paragraph 7(c) of the *Trademarks Act*.
3. FCCM and Asialicious Holdings' counterclaim is dismissed.
4. The Defendants are permanently enjoined, and so are those acting under their direction or control, from using ASIALICIOUS or any materially similar variant, in association with multicultural entertainment exhibitions and the organization of festivals to promote food, restaurants, the hospitality industry, and food culture, restaurant-promotion programs, coupon-book or discount-card programs, and directly related event-promotion services in the GTA, in a manner likely to cause confusion with FACT's services.
5. Asialicious Holdings is permanently enjoined from using ASIALICIOUS as a trade name.
6. FCCM, CCHAC, and Asialicious Holdings shall pay FACT nominal damages in the amount of \$5,000.00, jointly and severally.
7. FCCM, CCHAC, and Asialicious Holdings shall pay FACT its costs jointly and severally as follows:
 - a. costs assessed in accordance with the upper end of Column 3 of Tariff B, in the amount of \$66,730.31;

- b. in addition, a lump sum costs award of \$5,000.00, reflecting the volume of unnecessary work for the Plaintiff generated by the Defendants' conduct.

"Michael D. Manson"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-1346-21

STYLE OF CAUSE: FEDERATION OF ASIAN CANADIANS TORONTO v
ASIALICIOUS HOLDINGS INC., FEDERATION OF
CHINESE CANADIANS IN MARKHAM, AND
CHINESE CUISINE & HOSPITALITY ASSOCIATION
OF CANADA

PLACE OF HEARING: TORONTO, ONTARIO AND VANCOUVER, BC

DATE OF HEARING: MARCH 9-12, 2026 AND MARCH 18, 2026

JUDGMENT AND REASONS: MANSON J.

DATED: APRIL 14, 2026

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