

**Date: 20090703**

**Docket: T-920-08**

**Citation: 2009 FC 699**

**Vancouver, British Columbia, July 3, 2009**

**PRESENT: Roger R. Lafrenière, Esquire  
Prothonotary**

**BETWEEN:**

**JOE HAND PROMOTIONS INC.**

**Plaintiff**

**and**

**JOHN DOE #1 CARRYING ON BUSINESS UNDER THE FIRM NAME  
AND STYLE OF MAJOR LEAGUE SPORTS BAR & GRILL,  
JOHN DOE #2 CARRYING ON BUSINESS UNDER THE FIRM NAME  
AND STYLE OF JP MALONE'S BAR & GRILL,  
JOHN DOE #3 CARRYING ON BUSINESS UNDER THE FIRM NAME  
AND STYLE OF WESTSIDE CHARLIES AND  
JOHN DOE #4 CARRYING ON BUSINESS UNDER THE FIRM NAME  
AND STYLE OF WESTSIDE CHARLIES**

**Defendants**

**REASONS FOR ORDER AND ORDER**

[1] The Plaintiff moves *ex parte* pursuant to Rule 210(2) and Rule 369 of the *Federal Courts Rules* for default judgment against three "John Doe" Defendants.

[2] On a motion for default judgment, the Court has two questions before it. First, is the defendant in default and second, is there evidence to support the plaintiff's claim. The former assumes that there is party against whom relief can be obtained. The latter requires that there be evidence that the said party is liable to the plaintiff.

[3] The practice of using the term "John Doe" in the style of cause is directed at permitting a plaintiff to sue a person whose name the plaintiff does not know. The practice is perfectly acceptable; however, the expectation is that the plaintiff will take reasonable steps to identify the unnamed defendant and then move to amend the style of cause. Further, in order to obtain default judgment, the plaintiff must establish that service of the statement of claim was properly effected in accordance with the *Federal Courts Rules*.

[4] On the evidence before me, it is unclear whether the three unnamed defendants are individuals, corporations, or sole proprietorships. I am therefore unable to conclude whether service of the Statement of Claim by registered mail to business addresses where the copyright infringement took place was effective service on the John Doe Defendants. In any event, the Plaintiffs cannot succeed upon the bare fact of some unnamed defendant's failure to defend the claim. The proof required must persuade the Court on a balance of probabilities that the Plaintiff is entitled to the relief which it seeks against specific individuals or entities. The Court is not prepared to grant blank judgments, particularly since they cannot realistically be enforced.

[5] The motion is dismissed, without prejudice to the Plaintiff's right to re-apply with better evidence.

**ORDER**

**THIS COURT ORDERS that** the motion is dismissed.

“Roger R. Lafrenière”

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Prothonotary

**FEDERAL COURT**

**SOLICITORS OF RECORD**

**DOCKET:** T-920-08

**STYLE OF CAUSE:** JOE HAND PROMOTIONS INC. v.  
JOHN DOE #1 CARRYING ON BUSINESS  
UNDER THE FIRM NAME AND STYLE OF  
MAJOR LEAGUE SPORTS BAR & GRILLS et al.

***EX PARTE* MOTION IN WRITING WITHOUT PERSONAL APPEARANCE OF THE  
PARTIES**

**REASONS FOR ORDER  
AND ORDER:** LAFRENIÈRE P.

**DATED:** July 3, 2009

**WRITTEN REPRESENTATIONS:**

Mr. Murray L. Engelking

FOR THE PLAINTIFF

N/A

FOR THE DEFENDANTS

**SOLICITOR OF RECORD:**

Engelking Wood  
Edmonton, Alberta

FOR THE PLAINTIFF

N/A

FOR THE DEFENDANTS