

Federal Court



Cour fédérale

Date: 20140514

Docket: T-1774-13

Citation: 2014 FC 690

Winnipeg, Manitoba, May 14, 2014

PRESENT: The Honourable Mr. Justice Phelan

BETWEEN:

**THE COLLEGE OF PEDORTHICS OF
CANADA**

Plaintiff

and

**CANADIAN COLLEGE OF PEDORTHICS
LTD., COLLEGE OF CERTIFIED
PEDORTHISTS OF ONTARIO LTD., 2244915
ONTARIO LTD. C.O.B. AS NATIONAL
ACADEMY OF OSTEOPATHY, AND SHANIN
POURGOL**

Defendants

JUDGMENT

FOR REASONS ISSUED;

THIS COURT ORDERS that:

1. Default judgment be hereby granted in this action in favour of the Plaintiff.

2. It is hereby declared that each of the Defendants has infringed the College's exclusive rights to the use of the Certification Mark. C. Ped(C) Registration No. TMA 411, 453, contrary to sections 19 and 20 of the *Trade-marks Act* (R.S.C., 1985, c. T-13).
3. It is hereby declared that each of the Defendants has directed public attention to their services and business in such a way as to cause or be likely to cause confusion in Canada between the Plaintiff's services or business and those of the Defendants, contrary to section 7(b) of the Act.
4. It is hereby declared that each of the Defendants has made use of descriptions of their services that are false in a material respect and likely to mislead the public, contrary to section 7(d) of the Act.
5. It is hereby declared that each of the Defendants has used the Certification Mark in a manner that is likely to have the effect of depreciating the value of the goodwill attaching thereto, contrary to section 22 of the Act.
6. It is hereby declared that each of the Defendants has made unauthorized use of the Certification Mark contrary to section 23(3) of the Act.
7. A permanent injunction be hereby granted restraining and enjoining the Defendants their officers, directors, employees, agents, affiliated or associated corporations and all those over whom they may exercise control from:
 - a. Infringing the Certification Mark;

- b. Directing public attention to their services and business in such a way as to cause confusion in Canada between the Plaintiff's services or business and those of the Defendants;
 - c. Using, or authorizing others to use, in Canada as a trade-mark, trade-name or otherwise, C. PED (C) or any designation confusingly similar therewith, in association with the services of a pedorthist;
 - d. Using, or authorizing others to use, in Canada as a trade-mark, trade-name or otherwise, Canadian Certified Pedorthists or any designation confusingly similar therewith, in association with the services of a pedorthist; and
 - e. Making false and misleading statements, in a material respect, for the purposes of promoting their business and services.
8. The Defendants shall post a copy of the Judgment herein on all websites and Facebook pages which they manage, administer or control content and to send a copy to any and all persons they licensed or authorized to use the term "CPed".
9. The Defendants The College of Certified Pedorthists of Ontario Ltd. And the Canadian College of Pedorthics Ltd., shall, within thirty (30) days of the date of this Order, change their corporate names in such a manner as to avoid any likelihood of confusion with the name of the Plaintiff.
10. The Defendants shall deliver up to the Plaintiff or its counsel within thirty (30) days of the date of this Order, on oath, all articles, signs, advertising material

promotional literature, labels, invoices, documents or materials in the case, custody or control of the Defendants.

11. The Defendants shall permanently delete any electronic materials, including any websites or other electronic postings available to the public, which offend in any way against such Orders as may be made herein.
12. The Defendants shall transfer to the Plaintiff within thirty (30) days of the date of this Order the internet domain names canadiancollegeofpedorthics.com, ccpo.com and any other internet domain names which offend in any way against such Orders as may be made herein.
13. An Order requiring the Defendants The College of Certified Pedorthists of Ontario Ltd. And Shahin Pourgol to, respectively, withdraw the Canadian trade-mark applications Serial Nos. 1,647,615 and 1,647,611.
14. The Defendants shall pay the sum of \$30,000 to the Plaintiff in respect of damages within thirty (30) days of the date of this Order.
15. The Defendants shall pay \$12,000 to the Plaintiff in respect of solicitor-client costs and disbursements pursuant to Tariff B within thirty (30) days of the date of this Order.

“Michael L. Phelan”

Judge