

Federal Court



Cour fédérale

**Date: 20211206**

**Docket: T-184-21**

**Citation: 2021 FC 1357**

**Ottawa, Ontario, December 6, 2021**

**PRESENT: The Honourable Mr. Justice Ahmed**

**BETWEEN:**

**SCEND, LLC**

**Plaintiff**

**and**

**1037166 ONTARIO INC.,  
carrying on business as  
BEST RATE AUTO SALES**

**Defendant**

**ORDER AND REASONS**

**UPON CONSIDERING** the Plaintiff's *ex parte* motion, in writing, for default judgment against the Defendant under Rules 210 and 369 of the *Federal Courts Rules*, SOR/98-106 ("*Rules*");

**AND UPON BEING SATISFIED** that the Defendant has failed to serve and file a Statement of Defence within the time set out in Rule 204 of the *Rules*;

**AND UPON REVIEWING** the evidence submitted by the Plaintiff;

**AND UPON CONSIDERING** the following:

[1] The Plaintiff, Scend, LLC, is the owner of the Canadian trademark registration number TMA939733 for the trademark “FOR THE PEOPLE” (the “FOR THE PEOPLE Trademark”).

The FOR THE PEOPLE Trademark is also registered in the US, and is used in association with automobile dealership services.

[2] The Defendant, 1037166 Ontario Inc. (carrying on business as Best Rate Auto Sales), is an automobile dealership located in Windsor, Ontario. The Defendant is a former member of the Plaintiff’s “RICH DEALERS” program, under which the Defendant became a licensed user of the FOR THE PEOPLE Trademark in March 2011.

[3] The Defendant terminated their license agreement with the Plaintiff on August 2, 2012 and agreed to discontinue the use of all restricted trademarks and campaigns.

[4] On June 10, 2014, the Plaintiff filed a trademark-infringement action against the Defendant in this Court (**T-1402-14**). The claim was discontinued on September 22, 2014, when the Defendant once again became a licensed user of the FOR THE PEOPLE Trademark.

[5] The Plaintiff submits that the Defendant stopped paying the licensing fees to use the FOR THE PEOPLE Trademark later in 2014.

[6] In November 2020, the Plaintiff learned that the Defendant had continued to use the FOR THE PEOPLE Trademark, and approached the Defendant directly, with no response.

[7] Considering the factors enumerated under subsection 6(5) of the *Trademarks Act*, I find that a casual consumer somewhat in a hurry would likely confuse the advertisements and promotion materials used by the Defendant for the FOR THE PEOPLE Trademark (*Veuve Clicquot Ponsardin v Boutiques Cliquot Ltée*, 2006 SCC 23 at para 20; *Driving Alternative Inc. v Keyz Thankz Inc.*, 2014 FC 559, at para 47).

[8] I find that the Defendant has infringed the rights of the Plaintiff to the FOR THE PEOPLE Trademark, contrary to sections 19 and 20 of the *Trademarks Act*, RSC 1985, c T-13 (“*Trademarks Act*”). In particular, the Defendant has used the FOR THE PEOPLE Trademark on their website without being licensed to do so by the Plaintiff. The Defendant has also been advertising its services in association with the FOR THE PEOPLE Trademark on their Facebook social media page.

[9] There is no indication that the Defendant will cease its infringing conduct absent an order of this Court. In light of the above findings, I conclude that the Plaintiff is entitled to a remedy in the form of an injunction and order for delivery up of infringing materials.

[10] Based on the evidence filed by the Plaintiff, I conclude that the Plaintiff has suffered damages in the amount of \$30,460.84 CAD by virtue of the Defendant’s infringing activities with respect to the FOR THE PEOPLE Trademark. This amount was calculated using the

monthly license charge of \$2,999.00 USD per month, from the date when the Plaintiffs became aware of the trademark infringement (November 2020) until the date the Plaintiff's Motion Record was filed with this Court (June 25, 2021), with the exchange rate of 1USD - 1.27CAD. I agree with the Plaintiff that the license fee formerly charged by the Plaintiff and paid by the Defendant is a reasonable basis to estimate the damages suffered by the Plaintiff from the Defendant's infringement.

[11] Punitive damages are an exceptional remedy where a party engages in malicious, oppressive and high-handed behaviour that offends the Court's sense of decency (*Whiten v Pilot Insurance Co.*, 2002 SCC 18, at para 36). I do not find that an award of punitive damages is reasonable in this case.

[12] The Plaintiff has requested its costs in the amount of \$2,308.10 CAD. Considering the factors under Rule 400(3) of the *Rules*, I find the Plaintiff's costs request to be suitable.

**ORDER in T-184-21**

**THIS COURT ORDERS that:**

1. The Plaintiff's motion for default judgment is granted.
2. The Defendant, and their officers, directors, servants, employees, agents, successors and assigns, and any other person under their power or control, are permanently enjoined from:
  - a. infringing the Plaintiff's exclusive rights to the FOR THE PEOPLE Trademark; and,
  - b. advertising, distributing, offering for sale or selling their goods in association with the FOR THE PEOPLE Trademark, or any other trademark confusingly similar.
3. The Defendant shall deliver up or destroy under oath, at their own expense, all goods, labels, packaging, advertising materials, signage, printed matter, including all plates, molds, matrices, and other material for producing or printing such items, and any other matter or materials in their collective or individual possession, power or control that would offend the injunction granted.
4. The Plaintiff is awarded \$30,460.84 CAD in damages, plus simple interest at 2.5% pre- and post-Judgment.

5. The Plaintiff is awarded \$2,308.10 CAD in costs, inclusive of disbursements.

"Shirzad A."

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** T-184-21

**STYLE OF CAUSE:** SCEND, LLC v 1037166 ONTARIO INC., carrying on  
business as BEST RATE AUTO SALES

**PLAINTIFF'S *EX PARTE* MOTION FOR DEFAULT JUDGMENT UNDER *FEDERAL COURTS RULES 210 AND 369***

**ORDER AND REASONS:** AHMED J.

**DATED:** DECEMBER 6, 2021

**WRITTEN SUBMISSIONS BY:**

Nancy A. Miller  
Allison Miller

FOR THE PLAINTIFF

**SOLICITORS OF RECORD:**

Miller IP Law  
Barristers and Solicitors  
Toronto, Ontario

FOR THE PLAINTIFF