

Federal Court



Cour fédérale

Date: 20250801

Docket: T-1412-24

Citation: 2025 FC 1350

Ottawa, Ontario, August 1, 2025

PRESENT: The Honourable Madam Justice Furlanetto

BETWEEN:

**DERMASPARK PRODUCTS INC.
POLLOGEN LTD.**

Plaintiffs

and

**AVEENA COSMETIC CLINIC INC.
FATEMAH FAKOURNA**

Defendants

JUDGMENT AND REASONS

I. **Overview**

[1] This is a motion for default judgment brought against the Defendants pursuant to Rule 210 of the *Federal Courts Rules*, SOR/98-106 [*Rules*]. The underlying action is a trademark proceeding raising allegations under subsections 7(b) and (c) and sections 19, 20 and 22 of the *Trademarks Act* RSC, 1985, c-T-13 [*TMA*].

[2] This is the second motion for default judgment brought by the Plaintiffs. In the order from the first motion (reported at 2025 FC 979), Justice Benoit Duchesne found that the Plaintiffs had established that the Defendants were in default, but as they had not provided sufficient evidence to establish ownership of the alleged trademarks asserted, the Plaintiffs had not met their burden to establish their claims. The order provided that the Plaintiffs could refile their motion on further and better evidence.

[3] While the amended motion record is now sufficient to establish the Plaintiff, Pollogen Ltd's [Pollogen's], ownership to the asserted registered trademarks and certain relief arising therefrom, as set out further below, there is insufficient evidence to allow the full scope of the relief requested. The motion is therefore granted in part only.

II. Analysis

[4] The Plaintiffs seek the following relief in their motion:

- a. A declaration that the Defaulting Defendants have infringed the Plaintiffs' rights, OxyGeneo, Pollogen, Pollogen Design trademarks, 3-in-1 super facial, Oxygeneo 3-in-1, OxyPod and Tripollar RF trademark (hereinafter the "**Common Law Trademarks**"), as well as any exclusive rights conferred to by the Trademarks Act for Canadian trademark registrations TMA1032928 for GENE0+, TMA1032944 and for OXYGENEO, TMA1041360 for 3-in-1 super facial, TMA1032940 for geneo+ design, and TMA1184661 for OXYPOD (hereinafter the "**Registered Trademarks**"), and collectively referred to along with Common Law Trademarks as "**Pollogen's Marks**") contrary to sections 19 and 20 of the Trademarks Act (the "**Trademarks Act**");
- b. A declaration that the Defaulting Defendants have, contrary to subsection 7(b) of the *Trademarks Act*, directed public attention to their business, goods and services in such a

- way so as to cause confusion in Canada between their business, goods and services and those of the Plaintiffs;
- c. A declaration that the Defaulting Defendants, by their misconduct and contrary to section 7(c) of the *Trademarks Act*, have passed off their goods and services as and for the Plaintiffs' Goods and Services;
 - d. A declaration that the Defaulting Defendants, by their misconduct and contrary to section 22 of the *Trademarks Act*, have damaged the goodwill and reputation attached to Pollogen's Marks and to the Plaintiffs' business and have caused damages to the Plaintiffs through foregone sales, lost profits and reduced market share by misappropriating sales the Plaintiffs would have otherwise made;
 - e. A permanent injunction enjoining and restraining the Defaulting Defendants, by themselves or by their shareholders, directors, officers, employees, representatives and agents or by any company, partnership, trust, entity or person under their authority or control, or with which they are associated or affiliated (the "**Related Parties**"), from any and all use of Geneo, Geneo+, Oxygeneo, OxyGeneo, Pollogen, Pollogen Design trademarks, 3-in-1 super facial, Oxygeneo 3-in-1, OxyPod and Tripollar RF or any other word or mark confusingly similar thereto, as a trade name, trademark, domain name, social media account name, curriculum courses name, or otherwise in association with their business, goods or services;
 - f. An order requiring the Defaulting Defendants to recall and deliver up to the Plaintiff Dermaspark Products Inc. (hereinafter "**Dermaspark**") all documents, records, articles, products, packaging, displays, advertisements, signs, whether in electronic form or otherwise, and any and all other items in the possession, custody or control of the Defendants which offend in any way against any order which may be made herein;
 - g. Damages for, and arising from, the Defaulting Defendants' misconduct, amounting to direct infringement in the amount of \$70,000.00, for acts that are contrary to the *Trademarks Act*;
 - h. Punitive and exemplary damages in the amount of \$50,000.00;

- i Post-judgment interest on any award, compensatory or punitive damages and costs at 5%;
2. Plaintiff's costs of this motion and action against the Defaulting Defendants in the amount of \$6,000; and
3. Interest as described in the form of the Draft order herein in Plaintiff's Motion Record Tab 8;
4. Such further and other relief as to this Honourable Court may seem just

[5] I am satisfied based on the certificates of registration filed that the Plaintiffs have established that Pollogen owns the following registered trademarks (hereinafter collectively referred to as the "Pollogen Marks"):

Trademark	Registration No.	Registered Goods/Services
GENEO+	TMA1032928	cosmetic apparatus using micro-vibration, radio frequency, ultrasound for aesthetic facial and body skin treatment
OXYGENEO	TMA1032944	cosmetic apparatus using micro-vibration, radio frequency, ultrasound for aesthetic facial and body skin treatment
3-in-1 super facial	TMA1041360	facial skin treatment service for humans for cosmetic purposes; esthetic skin care treatment, namely facial exfoliation, oxygenation massages and skin treatment
geneO+ design	TMA1032940	cosmetic apparatus using micro-vibration, radio frequency, ultrasound for aesthetic facial and body skin treatment

Trademark	Registration No.	Registered Goods/Services
OXYPOD	TMA1184661	non-medicated exfoliating preparations for skin in exfoliating capsule for aesthetic facial and body skin treatment for use with cosmetic medical apparatus, none of the above for the prevention or treatment of acne

[6] I am similarly satisfied from review of the amended affidavits of Moshe Ben-Shlomo and Moshe Gurevitch, and the agreement between Pollogen and Dermaspark Products Inc [Dermaspark] attached to these affidavits, that Dermaspark is the exclusive Canadian distributor of Pollogen's products, and an exclusive licensee of Pollogen's related trademarks, including the Pollogen Marks, in Canada. The relationship between Pollogen and Dermaspark and the goods and services offered are described in the amended affidavit of Moshe Ben-Shlomo as follows:

6. Pollogen manufactures and offers a line of clinically proven, non-invasive, safe and anti-aging facials and body contouring treatments for a wide range of aesthetic, and which are highly popular and well-known by medical and aesthetic professionals alike across Canada, including but not limited to, the 3-in-1 super facial and all the consumables (gels), spare parts and accessories used with the original OxyGeneo apparatus, also called Geneo+ (hereafter "Pollogen Products");

7. Pollogen's Products are distributed by Dermaspark, under license and used in association with services by Dermaspark's customers and licenses [*sic*];

8. The OxyGeneo cosmetic apparatuses, also called "Geneo Plus" use micro-vibration, radio esthetical products such as the OxyGeneo pods (Oxypods) and gel kits;

[7] In addition to the registered rights, the Plaintiffs also ask the Court to recognize common law trademark rights for a number of marks, including those that are the subject of Pollogen's trademark registrations. Common law trademark rights are established through use of the mark in

association with goods and services in the marketplace and are restricted to the jurisdiction of use. Thus, when asserting common law trademark rights, evidence of use must be considered. As the registered trademark rights are based on use of the respective trademarks in Canada as of the dates indicated on the trademark registrations, I am satisfied that common law rights to the trademarks also exist as of those dates. However, in my view, nothing turns on this identification as the relief requested under sections 19, 20, and 22 of the TMA require registration of the asserted marks and the allegations under subsections 7(b) and (c) are based on the trademarks as registered. As the Pollogen Marks are registered trademarks there is no reason to consider the corresponding common law rights for the same trademarks.

[8] With respect to the remaining common law trademarks asserted by the Plaintiffs, Justice Duchesne addressed these asserted rights in his order from the Plaintiffs' first default motion. As no new evidence was filed in the amended motion record with respect to these asserted rights, the findings previously made by Justice Duchesne continue to apply here.

A. *Infringement*

[9] Sections 19 and 20 of the TMA deal with trademark infringement.

[10] Section 19 gives the owner of a registered trademark the exclusive right to use its trademark throughout Canada in respect of its registered goods and services. Any unauthorized use of the trademark as registered is trademark infringement.

[11] Pursuant to paragraph 20(1)(a) of the TMA, a registered trademark is also deemed to be infringed if a person sells, distributes or advertises goods or services in association with a confusing trademark or trade name. Paragraph 20(1)(a) is thus broader in scope than section 19 and captures the unauthorized use of marks that are not identical (which is dealt with in section 19) but are confusingly similar, to a registered mark.

[12] A trademark is deemed to be used in association with goods if, at the time of transfer of the goods in the normal course of trade, it is marked on the goods themselves or on the packages of the goods, or is associated with the goods in some manner, that notice of the association is made (subsection 4(1) of the TMA). A trademark is deemed to be used in association with services if it is used or displayed in the performance or advertising of those services (subsection 4(2) of the TMA).

[13] The amended affidavit of Moshe Ben-Shlomo provides evidence of the use of the trademarks OXYGENEO and 3-in-1 superficial in association with the aesthetic services offered by the Defendant Aveena Cosmetic Clinic Inc [ACCI]. The evidence indicates that the Plaintiffs became aware of ACCI's activities and the use of the marks on or around January 14, 2024. The Plaintiffs provide screenshots taken on January 14, 2024 and February 19, 2025 of ACCI's website and on January 14, 2024 of ACCI's social media pages which advertise the "Oxygeneo 3-in-1 superficial" and describe and show the "Oxygeneo" or "OxyGeneo" treatment, including Instagram posts dating back to September 2023. The Plaintiffs assert that the excerpts depict a counterfeit device that is advertised as the Plaintiffs' OxyGeneo device.

[14] In these attachments, ACCI uses the trademark OXYGENEO on its own and as a composite with the 3-in1 superficial mark (*i.e.*, as Oxygeneo 3-in-1 superficial) to advertise its products and services. While I consider this to be infringement under section 19 of the TMA, even if the marks as used were not considered to be identical to the trademarks as registered by Pollogen, considering subsection 6(5) of the TMA, the degree of resemblance of the marks, the overlap between goods and services, the inherent distinctiveness of the OXYGENEO mark in particular, and the length of its use by the Plaintiffs, in my view, section 20(1)(a) of the TMA would be satisfied.

B. *Depreciation of Goodwill*

[15] Pursuant to subsection 22(1) of the TMA, “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” in the mark.

[16] In *Veuve Clicquot Ponsardin v Boutiques Cliquot Ltée*, 2006 SCC 23 [*Veuve Clicquot*] at paragraph 46, the Supreme Court of Canada set out four elements that must be established to make out a claim under section 22 of the TMA:

[...] Firstly, that a claimant’s registered trade-mark was used by the defendant in connection with wares or services — whether or not such wares and services are competitive with those of the claimant. Secondly, that the claimant’s registered trade-mark is sufficiently well known to have significant goodwill attached to it. Section 22 does not require the mark to be well known or famous (in contrast to the analogous European and U.S. laws), but a defendant cannot depreciate the value of the goodwill that does not exist. Thirdly, the claimant’s mark was used in a manner *likely* to have an effect on that goodwill (*i.e.*, linkage) and fourthly that the *likely* effect would be to depreciate the value of its goodwill (*i.e.*, damage). [Italics in original;]

[17] As explained in *Veuve Clicquot*, goodwill is the “positive association that attracts customers towards its owner’s wares or services rather than those of its competitors” (at para 50). It derives through reputation and connection over time and encapsulates the following factors (at para 54):

While “fame” is not a requirement of s. 22, a court required to determine the existence of goodwill capable of depreciation by a “non-confusing” use (as here) will want to take that approach into consideration, as well as more general factors such as the degree of recognition of the mark within the relevant universe of consumers, the volume of sales and the depth of market penetration of products associated with the claimant’s mark, the extent and duration of advertising and publicity accorded the claimant’s mark, the geographic reach of the claimant’s mark, its degree of inherent or acquired distinctiveness, whether products associated with the claimant’s mark are confined to a narrow or specialized channel of trade, or move in multiple channels, and the extent to which the mark is identified with a particular quality. See generally F. W. Mostert, *Famous and Well-Known Marks: An International Analysis* (1997), at pp. 11-15; INTA, *Protection of Well-Known Marks In the European Union, Canada and the Middle East* (October 2004).

[18] Depreciation of goodwill is caused through the “blurring” of brand image or the “whittling away” of the registered trademark’s power to distinguish the owner’s products and attract customers: *Veuve Clicquot* at paras 63-64.

[19] I am satisfied based on the evidence filed that the Plaintiffs have established the four factors set out in *Veuve Clicquot*: a) they have registered trademarks that were used by ACCI in association with ACCI’s aesthetic services; b) the trademarks used are sufficiently well known and have goodwill associated with them (see for example, paragraphs 27 and 28, and the excerpts attached at Exhibit 22 of Moshe Ben-Shlomo’s amended affidavit); c) through ACCI’s use of OXYGENEO and 3-in-1 superficial, the Plaintiffs lost control over the marks, affecting

the goodwill associated with the marks; and d) the likely effect of using OXYGENEO and 3-in-1 superficial with a device and services not offered by the Plaintiffs was to depreciate the value of the goodwill associated with the marks.

[20] As such, section 22(1) of the TMA has been satisfied.

C. *Sections 7(b) and 7(c) of the TMA*

[21] Subsection 7(b) of the TMA provides that “no person shall 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.” This provision is the statutory codification of the common law tort of passing off.

[22] There are three necessary components to establish passing off: (1) the existence of goodwill; (2) deception of the public due to a misrepresentation; and (3) actual or potential damage to the plaintiff: *Ciba-Geigy Canada Ltd v Apotex Inc*, 1992 CanLII 33 (SCC) at page 132, [1992] 3 SCR 120; *Kirkbi AG v Ritvik Holdings Inc/Gestions Ritvik Inc*, 2005 SCC 65 at para 66.

[23] In addition, for an action under subsection 7(b), the plaintiff must also meet an initial threshold requirement of establishing possession of a valid and enforceable trademark, either registered or unregistered, at the time the defendant first began directing public attention to its

own goods and services: *Sandhu Singh Hamdard Trust v Navsun Holdings Ltd*, 2019 FCA 295 at para 39.

[24] In this case, I am satisfied on the evidence before me that all three elements of subsection 7(b) have been established. As noted earlier, the Plaintiffs have provided evidence demonstrating that there is reputation and goodwill associated with the Pollogen Marks. The evidence further demonstrates that ACCI has misrepresented to the Canadian marketplace through its use of Pollogen Marks in association with the aesthetic treatments offered on its website and through social media that they are authorized by the Plaintiffs, and through this misrepresentation has created a likelihood of confusion in the marketplace as to the source of the device used and services offered. While there is no evidence of actual damage, where the products and services offered are in direct competition to those offered by a plaintiff, damage is presumed: *Cheung v Target Event Production Ltd*, 2010 FCA 255 at para 26. As the device used and services offered by ACCI are directly related to those offered through the Plaintiffs, it can reasonably be inferred that the Plaintiffs have lost at least some sales and business because of the deception caused by ACCI's activities.

[25] Unlike subsection 7(b) of the TMA, subsection 7(c) of the TMA is focussed on substitution, as opposed to confusion: *Diageo Canada Inc v Heaven Hill Distilleries, Inc*, 2017 FC 571 [*Diageo*] at para 96. Pursuant to subsection 7(c) of the TMA, “no person shall pass off other goods or services as and for those ordered or requested.” Specifically, there must be a substitution of one trader's goods “as and for those ordered or requested”: *Positive Attitude Safety System Inc v Albian Sands Energy Inc*, 2005 FCA 332 at para 34.

[26] The criteria required to satisfy an action under subsection 7(c) was outlined in *Distrimed Inc v Dispill Inc*, 2006 FC 1229 at paragraph 68 and reiterated in *Diageo* at paragraph 97 as follows:

[68] ... Passing off by substitution will be established where, in answer to an order for what plainly appears to be the plaintiff's goods, the defendant, without any explanation of the circumstances, supplies corresponding goods of his own or someone else's manufacture without any enquiry whether the plaintiff's goods or merely equivalent goods are required. In order, however, to found a case of passing off by substitution it must be clear that the words in which the order was given referred to goods of the plaintiff and nobody else. It must be clear that proper notice was given to the retailer as to the articles desired and that something was substituted for that which was ordered. It is not an improper substitution of goods or services if the purchaser is told that the goods or services he asked for are not available and agrees to take others in their place. (*Fox on Canadian Law of Trade-marks and Unfair Competition*, above, at page 4-16)

[27] In this case, there is no evidence before me as to specific customer communications relating to the sale of ACCI's products and services. As such, while I am able to conclude that there has likely been confusion in the marketplace created by ACCI's deceptive advertising, I cannot conclude that passing off by substitution has actually occurred.

D. *Injunction and Damages*

[28] The Plaintiffs request various forms of relief in their motion, including an injunction, compensatory damages, and punitive damages.

[29] The amended affidavit of Moshe Ben-Shlomo indicates that on or around January 14, 2025, Dermaspark discovered that ACCI's salon located at 6115 Yonge Street in Toronto was listed for sale on a real estate broker website on or around November 23, 2024. The evidence

refers to further advertising indicating ACCI's services at two new locations on Yonge Street in Toronto. The evidence includes a screenshot of ACCI's Instagram profile, although in this screenshot there is no evidence of use of the Pollogen Marks. Nor is there any evidence of such continuing use from the hyperlink to the ACCI Instagram page provided in the amended affidavit of Moshe Ben-Shlomo at paragraph 24.

[30] In a separate attachment to the Moshe Ben-Shlomo amended affidavit, there is a screenshot of the ACCI website allegedly taken from February 19, 2025, which refers to the "Oxygeneo 3-in 1- superfacial". However, the Plaintiffs also state in their written materials that "after having been sent a demand letter by the Plaintiffs' counsel on or around February 7, 2024, the Defaulting Defendants removed the g [sic] references on their website and social media pages." When the website is visited through the embedded hyperlinks provided at paragraph 24 of the amended affidavit there is no apparent current continuing reference to any of the Pollogen Marks.

[31] The Plaintiffs suggest that "the Defaulting defendants continue to be in possession of, at the very least, one (1) Counterfeit Oxygeneo Device". However, it is unclear on what basis they make this assertion as they refer to the same internet and Instagram pages noted above.

[32] On the evidence before me, I cannot conclude whether ACCI is continuing to use any of the Pollogen Marks or a counterfeit device. However, as I am satisfied that the Plaintiffs' rights were infringed, that there is some risk that the acts complained of could continue, that there are no other effective alternative remedies as the Defendants have not formally responded to the

Plaintiffs' claim, and that there are no other discretionary considerations militating against my granting an injunction, it is my view that a permanent injunction should be granted (see the factors discussed in *Vidéotron Ltée v Konek Technologies*, 2023 FC 741 at para 72, citing to *Google Inc v Equustek Solutions Inc*, 2017 SCC 34 at para 66; *NunatuKavut Community Council Inc v Nalcor Energy*, 2014 NLCA 46 at paras 46–72; and *Cambie Surgeries Corp v British Columbia (Medical Services Commission)*, 2010 BCCA 396 at para 34).

[33] With respect to the issue of damages, the Plaintiffs acknowledge that “an accurate or close calculation of the damages actually suffered by the Plaintiffs, stemming from the Defaulting Defendants’ infringing conduct, is virtually impossible” and that they have been unable to obtain any documentation with respect to the Defendants’ advertising and sale of services using the Pollogen Marks. As infringement and passing off have been established, they assert that nominal damages should therefore be awarded.

[34] The Plaintiffs assert that the range of nominal damages is typically between \$15,000 - \$35,000. They refer to three cases in support of this assertion (*Trans-High Corporation v Conscious Consumption*, 2016 FC 949, *Toys “R” Us (Canada) Ltd v Herbs “R” Us Wellness Society*, 2020 FC 682, and *Dermaspark Products Inc v O’Pure Distribution* (18 July 2024) T-2673-23 [*O’Pure*]), two of which are not default proceedings. The Plaintiffs request that the top end of this scale be awarded in this case (\$35,000 to each Plaintiff for a total of \$70,000) in view of the award given in the *O’Pure* default proceeding initiated by Dermaspark. However, while the Plaintiffs seek to draw parallels between that case and this proceeding, I am unable to make this link based on the limited information provided.

[35] Further, I note that in separate Dermaspark proceedings (*Dermaspark Products Inc v Patel*, 2023 FC 388 [*Patel*]) also included in the Plaintiffs' book of authorities, compensatory damages were awarded on a much smaller scale, in the amount of \$20,000. That case involved a summary trial where greater evidence was before the Court.

[36] An even smaller award was also made in another Dermaspark default proceeding, not referenced or included in the Plaintiffs' books of authorities, *Dermaspark Products Inc v Ipince (Dreamlook Beauty)*, 2025 FC 946, where relief was only granted in part. In that case, damages were awarded in the total amount of \$10,000.

[37] Considering all of the jurisprudence, the evidence before me, and in view of the fact that it is unclear if the infringing activity has continued beyond February 2025, I will award damages at the lower end of the scale in this case, in a total amount of \$15,000. I note that while the Plaintiffs assert that each Plaintiff should be entitled to damages, causing a doubling of the award, I do not agree. The agreement between Dermaspark and Pollogen indicates that Dermaspark alone is required to defend, enforce and protect the Pollogen Marks. While Pollogen has been added to the proceeding as trademark owner and is required to assist in that limited capacity, this involvement does not warrant a doubling of the damages awarded. Although the Plaintiffs refer to *O'Pure*, I note that separate damage awards were not provided to these same Plaintiffs in *Patel*.

[38] As to the issue of punitive damages, there is insufficient evidence before me to establish all of the factors set out in *Whiten v Pilot Insurance Co*, 2002 SCC 18 to justify this award. This

is further supported by the fact that continuing infringing activity has not been established, nor is it clear what has been offered for sale and/or sold in the real estate listing for 6115 Yonge Street.

E. *Personal Liability*

[39] The Plaintiffs allege that the individual Defendant Fatemah Fakourna [Fakourna] should be rendered personally liable along with the corporate Defendant ACCI.

[40] As set out in *Mentmore Manufacturing Co, Ltd v National Merchandising Manufacturing Co Inc*, 1978 CanLII 2037; 89 DLR (3d) 195 (FCA) [*Mentmore*] at pp 204-205, to establish personal liability:

...there must be circumstances from which it is reasonable to conclude that the purpose of the director or officer was not the direction of the manufacturing and selling activity of the company in the ordinary course of his relationship to it 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.

[41] Personal liability will only attach when the actions of a director or officer are such that the director's own behavior is tortious or exhibits a separate identity or interest from that of the corporation such as to make the acts or conduct complained of those of the individual: *Mentmore* at p 203. The degree and kind of participation of the individual defendant must be considered. It is a question of fact to be determined on the circumstances of the case: *Mentmore* at p 203.

[42] The Plaintiffs rely on the corporate search information attached to the amended affidavit of Moshe Ben-Shlomo which indicates that Fakourna is the sole Director of ACCI. They assert that Fatourna's actions "show pure recklessness and disregard for the Plaintiffs' intellectual

property rights as she continues to attempt to sell off the counterfeit device for her own personal gain thus perpetuating the infringement of Pollogen's Marks and attempting to involve third parties into the infringing behaviour."

[43] As already noted, it is unclear what has been offered for sale and/or sold in the real estate listing for 6115 Yonge Street. Further, there is no evidence before the Court on this motion to draw any conclusion that Fakourna has acted in a manner that is separate from that of ACCI. The fact that Fakourna is the sole Director of ACCI is insufficient to establish that she is acting in her own independent capacity.

[44] While I agree that Fakourna should not be permitted to set-up a new company and engage in the same infringing activities, and I shall structure the injunction awarded accordingly, there is no basis to render her personally liable to pay the damages awarded.

F. *Costs*

[45] The Plaintiffs request a lump sum award of costs based on a percentage of the legal fees that they assert were incurred to draft the motion materials. The Plaintiffs provide an amended affidavit from an employee of the solicitors for the Plaintiffs which simply states that the Plaintiffs incurred more than \$12,000 in fees for preparing their motion materials. The Plaintiffs do not provide any further support for the amount claimed.

[46] On the basis of the lack of supporting evidence before the Court, I find that the request for 50% of the asserted legal fees is too high. In the exercise of my discretion, and considering

the alternative Tariff amounts, the Court shall award costs in the amount of \$4,000 which represents 30% of the asserted fees.

JUDGMENT IN T-1412-23

THIS COURT’S JUDGMENT is that:

1. The Plaintiffs’ motion for Default Judgment is granted in part.
2. ACCI, its officers, directors, employees, successors and assigns, any related business entities, and all those over whom they, either by themselves or through any companies or other businesses, directly or indirectly control or operate, are prohibited and restrained permanently from:
 - i. Any and all use of the Pollogen Marks (as defined herein), or any trademark or tradename confusingly similar with the Pollogen Marks, as a trademark, trade name, or otherwise, in association with their business, wares or services, including but not limited to using the terms “Oxygeneo” and “3-in-1 superficial”, in a manner that is contrary to sections 19 and 20 of the TMA;
 - ii. Directing the public’s attention to their wares, services, and business in such a manner as to cause confusion between their wares, services and business and the wares, services and business of the Plaintiffs through the use of the Pollogen Marks in a manner contrary to subsection 7(b) of the TMA;

- iii. Depreciating in any way the goodwill in and to the Pollogen Marks, contrary to subsection 22(1) of the TMA.
3. ACCI shall immediately deliver up to the Plaintiff Dermaspark Products Inc. or destroy under oath any materials or items in their possession, custody or control which offend the above injunction.
4. ACCI shall pay to the Plaintiffs damages in the amount of \$15,000.
5. The Plaintiffs are awarded costs of this motion to be paid by ACCI in the amount of \$4,000.
6. All other requests in the motion are dismissed.

"Angela Furlanetto"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-1412-24

STYLE OF CAUSE: DERMASPARK PRODUCTS INC ET AL. v.
AVEENA COSMETIC CLINIC INC. ET AL.

JUDGMENT AND REASONS: FURLANETTO, J.

DATED: AUGUST 1, 2025

**MOTION IN WRITING CONSIDERED IN OTTAWA, ONTARIO PURSUANT TO
RULES 210 AND 369 OF THE *FEDERAL COURTS RULES*.**

WRITTEN SUBMISSIONS BY:

Me Santiago Avelar, B.Sc.,
LL.B.

FOR THE PLAINTIFFS

SOLICITORS OF RECORD:

Pinto Legal
Barristers and Solicitors
Montréal, Québec

FOR THE PLAINTIFFS