Court No. T-541-25

FEDERAL COURT

BETWEEN:

ASPEN CUSTOM TRAILERS INC.

Plaintiff / Defendant by Counterclaim

-and-

SEMPLE GLOBAL CORPORATION, BRANDT GROUP OF COMPANIES, BRANDT TRACTOR LTD.

Defendants / Plaintiffs by Counterclaim

STATEMENT OF DEFENCE AND COUNTERCLAIM

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STATEMENT OF DEFENCE

1. This Statement of Defence is filed by the Defendants, Semple Global Corporation, Brandt Group Of Companies, and Brandt Tractor Ltd. (the "Defendants") in response to the Statement of Claim dated February 18, 2025 (the "Claim"), as filed by Aspen Custom Trailers Inc. (the "Plaintiff").

2. The Defendants seek the following relief:

   (a) Dismissal of this action;

   (b) Costs of this matter on a solicitor and client basis, or such other basis as this Honourable Court deems just; and

   (c) Such other relief as this Honourable Court may provide.

3. Except as admitted herein, the Defendants deny each and every allegation contained in the Claim, and puts the Plaintiff to the strict proof thereof. Further, the Defendants deny that the Plaintiff is entitled to any of the relief claimed in the Claim.

4. The Defendants admit paragraphs 4, 5, 6, and 12.

5. In reply to paragraph 9, the Defendants admit that the Plaintiff is recorded as the owner of registration no. TMA1,033,559 (the "Asserted Trademark"), but denies that the registration is used by the Plaintiff as a trademark, or that the registration is valid or enforceable.

6. On August 15, 2017, the Plaintiff filed its application for the Asserted Trademark, and claimed that it was based on use with respect to services, but proposed use in association with the goods of heavy-haul trailers and trailer accessories, namely jeeps and boosters. To the best of the Defendants' knowledge, the Plaintiff did not, and has not, filed a declaration of use for the Asserted Trademark. Accordingly, the Asserted Trademark's registration is invalid. Alternatively, if a declaration of use has been filed, the Defendants state that the declaration of use was false or materially misrepresented, as the Plaintiff has not used the Asserted Trademark in Canada in association with the relevant goods pursuant to section 4 of the *Trademarks Act*, R.S.C. 1985, c. T-13 (the "*Act*").

7. Therefore, in specific reply to paragraph 8, the Defendants deny that the Plaintiff has ever used the Asserted Trademark in Canada in association with heavy-haul trailers, and trailer accessories, including jeeps and boosters. The Defendants deny that, at the time of the transfer of these goods in the normal course of the Plaintiff's trade, the Asserted Trademark is not marked on the Plaintiff's goods, or the goods' packaging, and is not in any other manner associated with the goods. Accordingly, the Defendants state that the Asserted Trademark is not used by the Plaintiff in association with the relevant goods pursuant to section 4 of the *Act*. The statement of proposed

use in the Plaintiff's application for the Asserted Trademark is a material misstatement. Without this false declaration of proposed use with respect to the goods, the Asserted Trademark was not registrable at the date of registration.

8. In further reply to paragraphs 7 to 9, to the extent that the Plaintiff has used the Asserted Trademark, it has always been used as a generic or clearly descriptive term, describing the Plaintiff's purported ability of their heavy-haul trailers and trailer accessories to "haul more" than the equivalent products of their competitors. Therefore, the Defendants state that the registration of the Asserted Mark is invalidated on the basis that it was never registrable. The Asserted Trademark is not appropriately distinct, but is merely used as a generic or descriptive term. The Defendants therefore also deny that the public in Canada has any association with the Asserted Trademark other than as a generic or descriptive term as described herein. The Defendants further deny that the Asserted Trademark has become exclusively associated with the Plaintiff's trailers and trailer accessories, and denies the assertion that the Plaintiff has acquired substantial goodwill based upon the Asserted Trademark. In reply to paragraphs 10 and 11 of the Claim, the Defendants deny that the Plaintiff has the right to preclude or prevent others from using the Asserted Trademark or any confusingly similar trademarks or trade names, as the Asserted Trademark is not a "trademark" within the meaning of sections 2 and 4 of the *Act*, and the associated registration is invalid for the reasons set out herein.

9. In reply to paragraphs 13 to 15, the Defendants pleads that all its use of "HAUL MORE" is as a generic or clearly descriptive term. The Defendants deny that they needed the Plaintiff's license, authorization, or permission to use what is a descriptive phrase that the average Canadian user or consumer of the Defendants' trailers is likely to understand as product advertising for a superior hauling capability, and which should be available for use by all sellers and manufacturers in the industry to describe their respective heavy-haul trailers and accessory vehicles. For these reasons, Defendants deny that their use of the phrase "HAUL MORE" is trademark use as defined by the *Act*.

10. Furthermore, the Defendants state that there is co-existence in the trucking and trailer market with respect to the phrase "HAUL MORE". The Plaintiff's alleged use of this phrase amounts to advertising materials that tout the purported superior hauling ability of their goods. In this respect, the phrase "haul more" is commonly used in the trade by a variety of third parties to describe their goods.

11. Accordingly, in reply to paragraphs 17 to 18, the Defendants deny that their use of the phrase "HAUL MORE", as described in paragraphs 13 to 15, have any effect on the Plaintiff's goodwill in its Asserted Trademark, the existence of which is not admitted but instead expressly denied. If any

such goodwill existed within the invalid Asserted Trademark, the Defendants' marketing activities of using a clearly descriptive and generic slogan would not devalue that goodwill.

12. Likewise, the Defendants' use of the generic and descriptive term is not likely to cause confusion in Canada between the Defendants' trailers, services, and business and those of the Plaintiff. To the best of the Defendants' knowledge, the Plaintiff does not use "Haul More" as a direct stamp of branding on their products or on their packaging. Instead, it appears as a marketing slogan on their marketing materials. The Plaintiff uses its own name, Aspen, on their actual goods. Their customers know their trailers and trailer accessories as Aspen trailers, not Haul More trailers. Similarly, any incidental use by the Defendants of the phrase "HAUL MORE" is in marketing materials to advertise its own brand of trailers and trailer accessories, which are clearly stamped and labelled with Defendants' name, Brandt, in its specific and identifiable font and colour scheme. Both company names printed on their respective trailers, Aspen and Brandt, are very distinct and dissimilar. Therefore, despite both parties' marketing their trailers as having the ability to "haul more," there is no risk of confusion between the parties' products.

13. Finally, in reply to paragraph 20, the Defendants have not violated or infringed any of the Plaintiff's alleged rights under section 19, 20, or 22 of the *Act*, nor has committed passing off contrary to section 7(b) of the *Act* and the common law, as the Asserted Trademark is invalid for the reasons particularized herein, and in the Counterclaim, and the Plaintiff has no rights in or to the descriptive phrase "HAUL MORE".

COUNTERCLAIM

14. The Defendants/Plaintiffs by Counterclaim, Semple Global Corporation, Brandt Group Of Companies, and Brandt Tractor Ltd., claim:

    (a) A declaration that the Asserted Trademark, registration no. TMA1,033,559, is invalid and of no force and effect;

    (b) A declaration that the phrase "HAUL MORE" in association with heavy-haul trailer trailers and trailer accessories is a "clearly descriptive" term, within the meaning of section 12(1)(b) of the *Act*;

    (c) An order expunging registration no. TMA1,033,559 from the Trademarks Register;

    (d) Prejudgement and post-judgment interest in accordance with section 36 and 37 of the *Federal Courts Act*;

    (e) Costs of this action on a solicitor and client basis, payable forthwith; and

    (f) Such further and other relief as the Plaintiff by Counterclaim may seek and this Honourable Court may allow.

15. The Defendants repeat and rely upon the allegations contained in the Statement of Defence set out above.

16. The Defendants plead and rely upon the *Act*. Specifically, the Defendants plead and rely upon sections 2 and 57(1) of the *Act* as they are affected, or reasonably apprehend that they may be affected, by the trademark registration relied upon by the Plaintiff, which it seeks to invalidate.

17. The Defendants plead that the registration of the Asserted Trademark is invalid for each of the following reasons:

    (a) It was not registrable as of the date of registration pursuant to section 12(1)(b) and 18(1)(a) of the *Act*. Particularly, the Asserted Trademark "HAUL MORE" is clearly descriptive of the character or quality of the trailer goods in association with the Asserted Trademark (i.e. the Plaintiff's heavy-haul trailers can "haul more" than their competitors);

    (b) The Defendants do not use the Asserted Trademark in association with goods as defined pursuant to section 4 of the *Act*;

    (c) It was not and is not distinctive as of the date of this proceeding pursuant to sections 2 and 18(1)(b) of the *Act*. Particularly, the Asserted Trademark "HAUL MORE" clearly describes a trailer product that is intended to haul, or tow, more effectively than the competitors'

product. Asserting that one product is better and more capable at performing its primary functionality is the basis of any marketing campaign for any product in any industry. Accordingly, the words "HAUL MORE" do not distinguish, and are not capable or distinguishing, the Plaintiff's trailer products from those of the Defendant or any other manufacturer/seller; and

(d) The underlying application for registration were filed in bad faith contrary to section 18(1)(e) of the *Act*. At all materials times the Plaintiff knew or ought to have known that the phrase "HAUL MORE" is clearly generic and descriptive. Specifically, the Plaintiff knew or ought to have known the descriptive nature of the Asserted Trademark given the United States Patent and Trademark Office ("USPTO") refusing, dismissing, and/or invalidating the Plaintiff's application to register the same "HAUL MORE" phrase in the United States, per US Serial Number 87551796. The USPTO's correspondence to the Plaintiff on June 6, 2018 confirmed that their office refused the Plaintiff's application on the basis of descriptiveness, despite the Plaintiff's arguments to the contrary. As of January 4, 2019, the USPTO trademark application for "HAUL MORE" was deemed abandoned. The Plaintiff clearly was aware of the Asserted Trademark's generic and descriptive nature, and intended to appropriate this generic and descriptive term by registering the Asserted Trademark without advising the Trademarks Office of the clearly descriptive meaning of the term "HAUL MORE", and by improperly seeking a monopoly of the use of this phrase for trailer products, with the goal of depriving others of the right to use this clearly descriptive term in association with the sale and manufacture of heavy-haul trailer products.

18. The Defendants propose that this matter be tried in Regina, Saskatchewan.

DATED at Regina, Saskatchewan on May 7, 2025.

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