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Court File No. _____

FEDERAL COURT

BETWEEN:

GARKFINKEL PUBLICATIONS INC.

PLAINTIFF

AND:

**SASQUATCH GIFTS AND SOUVENIRS,
BRUCE FEARON, and FIONA FEARON**

DEFENDANTS

STATEMENT OF CLAIM

TO THE DEFENDANTS:

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or a solicitor acting for you are required to prepare a statement of defence in Form 171B prescribed by the Federal Courts Rules, serve it on the plaintiff's solicitor or, if the plaintiff does not have a solicitor, serve it on the plaintiff, and file it, with proof of service, at a local office of this Court

WITHIN 30 DAYS after the day on which this statement of claim is served on you, if you are served in Canada or the United States; or

WITHIN 60 DAYS after the day on which this statement of claim is served on you, if you are served outside Canada and the United States.

TEN ADDITIONAL DAYS are provided for the filing and service of the statement of defence if you or a solicitor acting for you serves and files a notice of intention to respond in Form 204.1 prescribed by the Federal Courts Rules.

Copies of the *Federal Courts Rules*, information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO DEFEND THIS PROCEEDING, judgment may be given against you in your absence and without further notice to you.

Dated: February 15, 2023 Issued by: _____
(Registry Officer)

Address of
Local office: 701 West Georgia Street
3rd Floor, PO Box 0065
Vancouver, BC V7Y 1B6

TO: Sasquatch Gifts and Souvenirs
101-196 Esplanade
Harrison Hot Springs
BC V0M 1K0

Bruce Fearon
101-196 Esplanade
Harrison Hot Springs
BC V0M 1K0

Fiona Fearon
101-196 Esplanade
Harrison Hot Springs
BC V0M 1K0

AND TO: The Administrator
Federal Court of Canada

I. CLAIM:

(A) The Plaintiff Claims:

(a) a declaration that Sasquatch Gifts and Souvenirs, Bruce Fearon and Fiona Fearon (collectively, the “**Defendants**”) have infringed and are deemed to infringe the copyright in the Copyrighted Works contrary to sections 3 and 27 of the Copyright Act;

(b) interlocutory and permanent injunctions restraining the Defendants, by themselves and their employees, partners, agents, officers, directors, related, subsidiary and/or parent corporations, or otherwise, from directly or indirectly doing any of the following acts without the Plaintiff’s explicit permission or authorization:

- i. infringing copyright in the Copyrighted Works, or authorizing any such acts;
- ii. producing or reproducing the Copyrighted Works or any substantial part thereof in any material form whatsoever, or authorizing any such acts; and/or,
- iii. possessing a copy of the Copyrighted Works for the purpose of doing anything referred to herein.

(c) damages and an accounting of profits, in an amount which may exceed \$50,000;

(d) exemplary, aggravated and punitive damages;

- (e) the Plaintiff's costs of the action on a solicitor-client scale together with the Plaintiff's disbursements;
- (f) pre-judgment and post-judgment interest on such damages or profits from the date they arose to the date of payment;
- (g) all applicable taxes; and,
- (h) such further and other relief as this Honourable Court may deem just.

II. **FACTS**

(A) **The Parties**

2. The Plaintiff, Garfinkel Publications Inc. ("**Garfinkel**") is a corporation duly incorporated under the laws of British Columbia with a registered office at 2800-595 Burrard Street, PO Box 49130, Vancouver, BC V7X 1J5, operating under the tradename Native Northwest.
3. The Defendant, Sasquatch Gifts and Souvenirs ("**Sasquatch Gifts**"), is a business having an address at 196 Esplanade, Harrison Hot Springs, BC V0M 1K0.
4. The Defendant, Bruce Fearon, is an individual residing in British Columbia who owns and operates Sasquatch Gifts.
5. The Defendant, Fiona Fearon, is an individual residing in British Columbia who owns and operates Sasquatch Gifts.

(B) Business of the Plaintiff

6. Garfinkel is in the business of promoting indigenous culture through the sale of indigenous art featured on products including apparel, gifts, and stationery on its website www.nativenorthwestselect.ca.
7. Garfinkel partners with indigenous artists on a foundation of respect and authenticity to allow artists to tell the stories of their communities and cultures through their distinct designs.
8. All artists featured on www.nativenorthwestselect.ca have provided consent and appropriate contractual authorization for their art to be featured on Native Northwest products. Garfinkel recognizes the artist names and cultural affiliation on all product packaging.
9. More particularly, for the purposes of this proceeding, Garfinkel is the registered owner of Canadian Copyright Registration No. 1190030 in artistic and literary works comprising "SASQUATCH". A copy of this registration is attached as **Appendix "A"**.
10. The original Sasquatch design was authored in 2011 by Francis Horne Sr. ("**Horne**"), a world-renowned Coast Salish artist and master carver. For his sculpting legacy and his lifelong commitment to helping and healing others, Horne was recognized with an honorary Doctorate from the University of the Fraser Valley.

11. A copy of the original work, as authored by Horne and protected by Canadian Copyright Registration No. 1190030, is attached as **Appendix “B”** (the “**Copyrighted Work**”).
12. Garfinkel is the sole owner of the copyright in and to the Copyrighted Work in Canada, pursuant to the *Copyright Act*.
13. As owner of the Copyrighted Works, pursuant to section 3 of the *Copyright Act*, Garfinkel has the exclusive right to produce or reproduce the Copyrighted Work or any substantial part thereof, in any material form whatsoever, and the exclusive right to authorize such acts by others.

(C) The Defendants’ Infringing Activities

14. The Defendants Bruce and Fiona Fearon own and operate the Defendant Sasquatch Gifts. Since at least as early as June 18, 2022, the Defendants have offered for sale merchandise comprising the Copyrighted Work.
15. This includes, but is not limited to, t-shirts and sweatshirts reproducing a substantial part of the Copyrighted Work without authorization. Shown below is the original work (left) as compared to an infringing t-shirt offered for sale at Sasquatch Gifts (right).



16. The Defendants continue to prominently display the Copyrighted Work, without authorization, in Sasquatch gifts:



17. Each of these activities is a violation of the Plaintiff's exclusive rights to reproduce, authorize reproductions of, and distribute reproductions of

the Copyrighted Work. The Defendants' actions constitute infringement of the Plaintiff's copyright in the Copyrighted Work.

18. The Plaintiff is unaware of the full extent of the Defendants' acts of infringement. Full particulars of the Defendants' acts of infringement are within the knowledge of the Defendants and not within the knowledge of the Plaintiff. The Plaintiff claims in respect of all infringing activities of the Defendants.
19. The Defendants were at all material times aware, knew or had reasonable grounds for knowing that copyright subsisted in the Copyrighted Works and that Garfinkel was the owner of the Copyrighted Work.
20. The Plaintiff first became aware of the infringement of the Copyrighted work when Horne personally attended the premises of the Defendants and observed such infringement. Horne then informed the Plaintiff of the infringement, and his personal objection to such infringement.
21. After learning of the Defendants' infringing activities, Gabe Garfinkel called Bruce Fearon on September 28, 2022, and advised him that Garfinkel was the sole owner of the Copyrighted Work and requested the Sasquatch Gifts immediately cease reproducing the Copyrighted Work. Mr. Fearon refused to take any steps to cease infringing the copyrights.

22. Mr. Garfinkel further sent a cease and desist letter to addressed to Bruce Fearon and Sasquatch Gifts reiterating the request that Sasquatch Gifts immediately cease producing, marketing, selling and distributing the Copyrighted Work.
23. On October 20, 2022, Mr. Garfinkel sent a second cease and desist letter via Canada Post registered mail. The letter was received on October 28, 2022. No response to the letter was received by Mr. Garfinkel or the Plaintiff.
24. On November 9, 2022, Mr. Garfinkel phoned Mr. Fearon. During the call, Mr. Garfinkel once again gave the Defendants an opportunity to cease and desist infringing the Copyrighted Work.
25. Mr. Fearon was hostile and refused to acknowledge that Garfinkel held copyright in the Copyrighted Work.
26. Following the call, Mr. Garfinkel sent a third cease and desist letter to both the store address and the PO box by registered mail. The letters included a copy of the Copyright registration, as well as a picture of Mr. Horne wearing a Native Northwest T-shirt with his design.
27. The letter to Sasquatch Gifts was delivered by registered mail on December 13, 2022. Once again, no response was provided to Mr. Garfinkel or the Plaintiff.
28. As owners of Sasquatch Gifts, the Defendants Bruce Fearon and Fiona Fearon are the controlling minds of the Defendant Sasquatch Gifts. Mr.

and Mrs. Fearon have expressly directed, ordered, authorized, aided and abetted the activities of the Defendant Sasquatch Gifts complained of herein.

29. By reason of the aforesaid acts of the Defendants, the Defendants have made and will make a profit, and the Plaintiff has suffered and will continue to suffer damages, until the Defendants are restrained.
30. The Defendants have, and continue to, profit off cultural appropriation of indigenous artists. The Plaintiff understands that such cultural appropriation is a serious issue that is deserving of this Court's rebuke. The conduct is reprehensible and ought to be condemned by this Court in the strongest manner.
31. The Defendants have acted in a high-handed, malicious, and reprehensible manner, with disregard for the Plaintiff's rights. Accordingly, the Plaintiff is entitled to punitive, aggravated, and exemplary damages.
32. The aforesaid activities of the Defendants will continue and/or recur unless restrained by this Honourable Court.
33. This action is not being proceeded with as a simplified action as the claim is not exclusively for monetary relief in an amount not exceeding \$50,000, exclusive of interest and costs.
34. The Plaintiff proposes that this action be tried at Vancouver, British Columbia.

DATED: February 15, 2023



SEASTONE IP LLP
520 – 800 West Pender St.
Vancouver, BC V6C 1E5

Mat Brechtel
Ben Pearson

Tel: 604.416.4149
Fax: 604.608.4859

Solicitors for the Plaintiff

TO: Sasquatch Gifts and Souvenirs
101-196 Esplanade
Harrison Hot Springs
BC V0M 1K0

AND TO: Bruce Fearon
101-196 Esplanade
Harrison Hot Springs
BC V0M 1K0

AND TO: Fiona Fearon
101-196 Esplanade
Harrison Hot Springs
BC V0M 1K0

AND TO: The Administrator
Federal Court of Canada

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PLAINTIFF

AND:

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FEARON**

DEFENDANTS

STATEMENT OF CLAIM

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Solicitors for the Plaintiff