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Natalie Wong	
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Court File No.

**FEDERAL COURT**

BETWEEN:

JUSTIN STITCHES INC.

PLAINTIFF

AND:

MAKERS HOLDINGS INC.

DEFENDANT

**STATEMENT OF CLAIM**

TO THE DEFENDANT:

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:

Issued by:

(Registry Officer)

Address of  
Local office:

TO: The Administrator  
THE FEDERAL COURT OF CANADA

AND TO: Makers Holdings Inc.  
3817 West 2<sup>nd</sup> Avenue,  
Vancouver, BC V6R 1K1

**CLAIM**

## 1. THE PLAINTIFF CLAIMS:

- (a) a declaration that the Defendant has directed public attention to its services and business as the services and business of the Plaintiff, contrary to paragraph 7(b) of the *Trademarks Act* and the tort of passing off;
- (b) a declaration that the Defendant has passed off its services as and for those of the Plaintiff, contrary to paragraph 7(c) of the *Trademarks Act*;
- (c) interlocutory and permanent injunctions restraining the Defendant and its servants, workmen, agents, contractors, and employees from directly or indirectly:
  - i. directing public attention to any of the Defendant's goods or business in such a way as to cause or to be likely to cause confusion between the goods and business of the Defendant and the goods and business of the Plaintiff; and
  - ii. passing off the Defendant's goods as and for those of the Plaintiff;
- (d) damages or an accounting of profits, which may exceed \$50,000, as the Plaintiff may, after due inquiry and full discovery, elect;
- (e) pre-judgment and post-judgment interest on such damages or profits from the date they arose to the date of payment;
- (f) an Order directing that the Defendant, at its own expense and within a time and upon such terms as may be fixed by this Honourable Court, destroy all goods, articles, and signage in its possession, custody, or power which offend in any way against any order which is made herein, and provide the Plaintiff with a signed representation under oath that such destruction has taken place;
- (g) the Plaintiff's costs of the action on a solicitor-client scale, together with the Plaintiff's disbursements;
- (h) all applicable taxes; and
- (i) such further and other relief as to this Honourable Court may seem just.

## FACTUAL BASIS

### The Parties

2. The Plaintiff, Justin Stitches Inc., is a corporation organized and operating under the laws of British Columbia, with a business address at 1420 Frances Street, Vancouver, BCX V5L 1Y9.
3. The Defendant, Makers Holdings Inc. is a corporation organized and operating under the laws of British Columbia, having a business address at 3817 West 2nd Avenue, Vancouver, BC V6R 1K1.

### Business of the Plaintiff

4. The Plaintiff operates retail gift stores in the Metro Vancouver Area under the brand name and trademark MAKE (the “**MAKE Trademark**”).
5. The Plaintiff offers retail and online services selling products made by Canadian artisans and small businesses (the “**MAKE Services**”). These products include but are not limited to clothing, outerwear, and other apparel; kitchen and home décor items; arts, crafts, and souvenirs; stationery; novelty items; and jewelry (the “**MAKE Products**”).
6. The Plaintiff owns the MAKE Trademark and trade name, which it adopted for use in association with its services since at least as early as March 2011 and has used it continuously since.
7. On April 3, 2023, the Plaintiff filed an application to register the MAKE Trademark.
8. The Plaintiff uses the MAKE Trademark in its advertising, promotion, and sales. The MAKE Trademark appears in different configurations and fonts. The most frequently used font and configuration of the MAKE Trademark used by the Plaintiff is in a serified, lower-case font, and example of which is as follows:

# make

(the “**MAKE Trademark Design**”)

9. As a result of substantial sales, advertising, and promotion in British Columbia and Canada, MAKE has become well-known as identifying the Plaintiff's Services as being associated with the Plaintiff. The MAKE Trademark has acquired substantial reputation and goodwill in British Columbia and Canada.
10. Further, by virtue of the reputation and goodwill associated with the MAKE Trademark, the Plaintiff has the right to prevent others from using the same or confusingly similar trademarks or trade names, in association with or in connection with services or a business likely to cause confusion or to create a deception as to the source of those services or business.

### Defendant's Activities

11. The Defendant operates retail stores that offers for sale goods produced by Canadian artisans and small businesses, including eight locations in BC, seven of which are in the Metro Vancouver Area.
12. The Defendant previously operated its stores under the name “The Nooks”; however, in or around February 2023, the Defendant adopted the name Makers and began using the trademark MAKERS in association with its services.
13. The Defendant uses MAKERS in a similar serifed, lower-case black font as the MAKE Trademark Design:



14. The services provided by the Defendants are similar to or the same as the MAKE Services, and the products sold at the Defendant's stores are similar to the MAKE Products and include clothing and apparel, stationery, home décor items, souvenirs, and jewelry. The parties sell their products in a similar marketplace.
15. The Defendant's use of MAKERS came to the attention of the Plaintiff in or around April 2023 after a customer confused one of the Defendant's stores for a new location of the Plaintiff's business.
16. The Defendant's store that was mistaken for being a new location of the Plaintiff's business is in Vancouver's Gastown neighbourhood, in close proximity to one of the locations where the Plaintiff operates.
17. By using MAKERS in association with its services, the Defendant has:
  - (a) directed public attention to its services and business in a manner that causes or is likely to cause confusion in Canada between the Defendant's goods and business and the goods and business of the Plaintiffs; and
  - (b) passed off the Defendant's services and business as those of the Plaintiff.

18. On April 6, 2023, the Plaintiff's counsel sent a letter to the Defendant demanding that the Defendant cease using MAKERS as a trade name or trademark, refrain from using any trademarks or trade names confusingly similar to the MAKE Trademark.
19. On April 19, 2023, the Defendant responded with an email in which it declined to make any agreement with the Plaintiff regarding its trade name and trademark but represented that it would move forward under the name "Shop Makers" and would be updating its signage accordingly "over the coming weeks".
20. On April 26, 2023, the Plaintiff's counsel sent an email to the Defendant outlining measures to reduce the likelihood of confusion between the proposed SHOP MAKERS mark and the Plaintiff's mark and requesting that the Defendant change its branding within 30 days.
21. On April 27, 2023, the Defendant sent an email asserting that the Plaintiff does not have any rights in or to the MAKE Trademark, or any right to proceed against the Defendant.
22. At no time did the Plaintiff agree or represent that it would be satisfied that the Defendant's proposed use of the SHOP MAKERS mark would prevent further confusion between the Defendant's business and that of the Plaintiff.
23. In any event, the Defendant has taken only limited steps to adopt the SHOP MAKERS mark.
24. The Plaintiff's knowledge, the Defendant has only changed the signage to display the SHOP MAKERS mark at one of its eight BC locations. It continues to use MAKERS as a trademark.
25. The Defendant continues to use a similar font and configuration as the MAKE Trademark Design. Where the term "shop" has been used by the Defendant, it is not used as part of the Defendant's trademark and is used in a significantly smaller font size.

26. The steps taken by the Defendant are insufficient to prevent an ongoing likelihood confusion.
27. On March 19, 2024, the Plaintiff's counsel sent a letter to the Defendant noting the Defendant's continued use of MAKERS contrary to the Plaintiff's rights, the Defendant's prior representations, and again demanding that the Defendant cease its use of MAKERS or any trademark confusingly similar to MAKE.
28. On March 20, 2023, the Defendant replied denying any wrongdoing and refusing to comply with the Plaintiff's demands.
29. The Defendant has used the MAKERS trademark to profit commercially from the substantial goodwill and reputation attached to the MAKE Trademark in the minds of consumers.
30. The Defendant has failed to cease using the MAKERS trademark and has therefore willfully and knowingly persisted in its infringing conduct.
31. The Defendant at all material times knew or had reasonable grounds for knowing that the MAKE Trademark has been extensively used by the Plaintiff in British Columbia, and that substantial goodwill and reputation attached to the MAKE Trademark in the minds of consumers.
32. The Defendant's conduct has and will continue to result in loss by and damages to the Plaintiff.
33. At no time has the Plaintiff authorized the Defendant to use the MAKERS trademark in association with its business in Canada.
34. By reason of the aforesaid acts of the Defendant, the Defendant has made and will continue to make a profit, and the Plaintiff has suffered and will continue to suffer damages unless and until the Defendant's conduct is restrained.
35. The aforesaid activities of the Defendant will continue and/or recur unless restrained by this Honourable Court.

36. 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.
37. The Plaintiff proposes that this action be tried at Vancouver, British Columbia.

Dated: June 18, 2024



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**Solicitors for the Plaintiff**

TO: The Administrator  
THE FEDERAL COURT OF CANADA

AND TO: Makers Holdings Inc.  
3817 West 2nd Avenue,  
Vancouver, BC V6R 1K1

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**STATEMENT OF CLAIM**

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