

Court File No. T-1567-24

**FEDERAL COURT**

BETWEEN:

JUSTIN STITCHES INC.

PLAINTIFF/

Defendant by Counterclaim

AND:

MAKERS HOLDINGS INC.

DEFENDANT/

Plaintiff by Counterclaim

**REPLY AND DEFENCE TO COUNTERCLAIM OF THE PLAINTIFF AND  
DEFENDANT BY COUNTERCLAIM, JUSTIN STITCHES INC.**

**REPLY TO DEFENCE**

1. Except as expressly admitted herein, Justin Stitches Inc. (the "**Plaintiff**") denies and joins issue with each and every allegation in the Statement of Defence and Counterclaim dated July 31, 2024 filed on behalf of Makers Holdings Inc. (the "**Defendant**").
2. The Plaintiff denies that the Defendant is entitled to any relief claimed in the Counterclaim, including but not limited to paragraph 11 of the Counterclaim.
3. In this Reply and Defence to Counterclaim, the Plaintiff adopts the definitions in the Statement of Claim.
4. The Plaintiff accepts the admissions set out in its Defence in paragraph 5 and in paragraph 9 insofar as the Defendant admits it declined to make an agreement with the Plaintiff and indicated the Defendant was going to transition to the name "Shop Makers".

5. The Plaintiff denies the allegations contained in paragraphs 7, 8, 13, and 14 of the Defence and Counterclaim.

#### **Defendant's use of "Shop Makers"**

6. In response to paragraph 6 of the Defence, the Plaintiff denies that the Defendant's alleged use of SHOP MAKERS signage at its locations is sufficient to avoid a likelihood of confusion between the Defendant's services and business and those of the Plaintiff.
7. In response to paragraph 9 of the Defence, the Plaintiff denies that the Defendant provided no terms with respect to how or when it would transition to using the name "Shop Makers". On April 19, 2023, the Defendant represented to the Plaintiff that the Defendant would be updating signage "over the coming weeks".

#### **MAKE is distinctive of the Plaintiff's services**

8. In response to paragraph 7 of the Defence, the Plaintiff denies that it has not acquired reputation and goodwill with the MAKE Trademark and the MAKE Trademark Design in British Columbia and Canada and that MAKE is incapable of being distinctive of the Plaintiff.
9. In response to paragraph 8 of the Defence, the Plaintiff denies that there are numerous third parties in Canada currently using "MAKE" as or as part of a trademark in association with the same or similar services for which the Plaintiff is using and has filed an application to register MAKE.
10. The Plaintiff denies that the table in paragraph 8 contains third-party marks comprising or containing MAKE in association with the same or similar services as the Plaintiff. In fact, many of the trademarks cited by the Defendant are registered in association with goods and services that are dissimilar and unrelated to those of the Plaintiff. The co-existence of the trademarks on the Canadian Trademarks Register cited by the Defendant, and any use by their owners of same if such use exists, is not sufficient to render the MAKE Trademark and MAKE Trademark Design non-distinctive.

## DEFENCE TO COUNTERCLAIM

11. The Plaintiff repeats and relies on the allegations, denials, and representations made above in its Statement of Claim and Reply to Defence.
12. With respect to paragraph 11 of the Counterclaim, the Plaintiff denies that the Defendant is entitled to the relief sought therein and the Plaintiff states it is entitled to the relief sought in the Statement of Claim.
13. In response to paragraph 13 of the Counterclaim, the Plaintiff denies that the MAKE Trademark and the MAKE Trademark Design are not distinctive of the Plaintiff and are incapable of being distinctive of the Plaintiff.
14. In response to paragraph 14 of the Counterclaim, the Plaintiff denies that the Defendant has not and could not have directed public attention to its goods, services or business in a manner that contravenes paragraph 7(b) of the *Trademarks Act*, or passed off its services and business as those of the Plaintiff in a manner that contravenes paragraph 7(c) of the *Trademarks Act*.

### Venue

15. In response to paragraphs 10 and 15, the Plaintiff agrees that this Counterclaim be tried together with the action. The Plaintiff disagrees with the Defendant's proposal that this action be tried at Toronto, Ontario. The Plaintiff's selection of jurisdiction is consistent with the location of both parties' businesses, and the actions complained of herein. The Plaintiff repeats its proposal that this action and Counterclaim should be tried in Vancouver, British Columbia.

Dated: August 28, 2024



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Plaintiff by Counterclaim**

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**REPLY AND DEFENCE TO  
COUNTERCLAIM**

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