

Court File No.: T-1567-24

FEDERAL COURT

BETWEEN:

JUSTIN STITCHES INC.

Plaintiff /
Defendant by Counterclaim

-and-

**MAKERS HOLDINGS INC., SHOP MAKERS
MARKETPLACE INC., AND SHOP MAKERS
MARKETPLACE VANCOUVER INC.**

Defendants /
Plaintiffs by Counterclaim

FURTHER AMENDED STATEMENT OF DEFENCE and COUNTERCLAIM

FURTHER AMENDED DEFENCE

1. Except as expressly admitted herein, the defendants/plaintiffs by counterclaim (the “Defendants”) denyies all allegations in the amended statement of claim dated ~~June 18, 2024~~ April 2, 2025 (the “Amended Claim”) and puts the plaintiff/defendant by counterclaim (the “Plaintiff”) to the strict proof thereof.
2. The Defendants admits the allegations at paragraphs 3, 3a, 3b, 7, 12, 18, 20, 21, 27, and 28 of the Amended Claim.
3. The Defendants haves no knowledge of the allegations at paragraphs 2, 4, 5, and 8 of the Amended Claim and put the Plaintiff to the strict proof thereof.
4. The Defendants specifically denyies that the Plaintiff is entitled to any of the relief sought in paragraph 1 of the Amended Claim.


5. With respect to the allegations at paragraph 11 of the Amended Claim, the Defendants admits that they operates a number of retail stores offering for sale goods produced by Canadian artists and small businesses, & 9 of which are in British Columbia. Specifically, the Defendants operates ~~44~~ 18 locations in Canada, in British Columbia, Alberta and Ontario. The Defendants opened theirs first store using MAKERS in or around April 2023.

6. The specific signage the Defendants uses at each of theirs store locations depends on the store itself, where the signage is to be displayed and the available space. For example, on some store locations the Defendants uses “SHOP MAKERS”, where “SHOP” is displayed in smaller font above the word “MAKERS” and on some store locations the larger text of “MAKERS” is displayed without “SHOP”.

7. With respect to the allegations at paragraph 6, 9 and 10, the Defendants denies the Plaintiff has any rights in the MAKE Trademark or the MAKE Trademark Design, that the Plaintiff has acquired any reputation and goodwill in British Columbia and Canada with the MAKE Trademark or the MAKE Trademark Design, or that MAKE is, or is capable of, being distinctive of the Plaintiff.

8. 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. A non-exhaustive list of these third-party marks include:

Registration Number	Trademark
TMA578960	MAKE
TMA973120	
TMA969926	MAKE MARKET
TMA982260	MAKE MARKET
TMA969933	MAKE MARKET
TMA1044170	MAKE MARKET

TMA973124	MAKE MARKET
TMA902699	MAKE ON
TMA978003	MAKE HAPPY
TMA893673	MAKE MEANING
TMA1029913	MAKE CREATIVITY HAPPEN
TMA1017311	MAKE GREAT TOGETHER
TMA1019065	
TMA812494	MAKE A STATEMENT
TMA832970	MAKE + MODEL
TMA1089561	MAKEOLOGY
TMA783356	MAKE LOVE NOT TRASH
TMA1143685	MAKE IT A LIFESTYLE
TMA853219	MAKE IT MINE!
TMA1095901	MAKE IT REAL
TMA513265	MAKE'N MOLD

~~8a. In addition, the MAKE Trademark is descriptive of the Plaintiff's services and business. The Plaintiff offers custom embroidery, printing and engraving services, allowing a customer to make their own custom goods. The MAKE Trademark is clearly descriptive of these customization services offered by the Plaintiff.~~

9. With respect to the allegations at paragraph 19, the Defendants admits that ~~they~~ declined to make an agreement with the Plaintiff regarding ~~their~~ trademark and trade name and that ~~they~~ indicated ~~they~~ ~~were~~ was going to transition to the name "Shop Makers". The Defendants expressly provided no specific terms with respect to how or when this transition would occur, nor did ~~they~~ ever indicate this transition would include permanently ceasing use of "Makers".
10. The Defendants disagrees with the Plaintiff's proposal that this action be tried at Vancouver, British Columbia, and proposes instead that this action, and counterclaim (as discussed below) be tried together at Toronto, Ontario.

FURTHER AMENDED COUNTERCLAIM

11. The Defendants seek a declaration that:
- a. the Plaintiff does not have any rights to the MAKE Trademark and the MAKE Trademark Design in Canada; ~~and~~ and
~~a.1 the Plaintiff is not entitled to registration of the MAKE Trademark in Canada; and~~
 - b. the Defendants haves not violated the Plaintiff's alleged rights in the MAKE Trademark or the MAKE Trademark Design, including by:
 - i. directing public attention to theirs services and business in such a way as to cause or be likely to cause confusion between theirs services and business and the services and business of the Plaintiff, or
 - ii. passing off the Defendant's' services and business for those of the Plaintiff.
12. The Defendants repeats and relyes on the allegations in the Amended Statement of Defence.
13. Further to paragraph 7 of the Amended Statement of Defence, the MAKE Trademark and the MAKE Trademark Design are not, and cannot be, distinctive of the Plaintiff considering the presence of numerous third parties using and having registered trademarks for or containing MAKE in association with similar goods and services, ~~and the descriptive nature of the MAKE Trademark with the Plaintiff's custom services.~~
14. Since the Plaintiff has not, and cannot have, developed reputation and goodwill in the MAKE Trademark and the MAKE Trademark Design, the Defendants haves not, and cannot have, directed public attention to theirs goods, services or business in a manner that contravenes section 7(b) of the *Trademarks Act*, nor

could they have passed off their services and business as those of the Plaintiff in a manner that contravenes section 7(c) of the *Trademarks Act*.

15. The Defendants proposes that this counterclaim be tried together with the action at Toronto, Ontario.

Dated at Toronto, Ontario this 31st day of July, 2024.

Amended: April 10, 2025

Further Amended: April 30, 2025



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