

Federal Court



Cour fédérale

**Date: 20260109**

**Docket: T-1063-25**

**Citation: 2026 FC 23**

**Ottawa, Ontario, January 9, 2026**

**PRESENT: Associate Judge Catharine Moore**

**BETWEEN:**

**DERMASPARK PRODUCTS INC.  
POLLOGEN LTD.**

**Plaintiffs**

**and**

**AMANDA OTTMANN D.B.A. ADMIRE BEAUTY AND MEDISPA**

**Defendant**

**JUDGMENT AND REASONS**

I. Overview

[1] This is a motion for default judgment brought against the Defendant, Amanda Ottmann, doing business as Admire Beauty and MedSpa, pursuant to Rule 210 of the *Federal Courts Rules* ["Rules"], SOR/98-106. The Plaintiffs' action alleges trademark infringement, and the motion seeks damages in the amount of \$70,000, pre-and post-judgment interest, as well as its costs. The action is brought under this Court's simplified procedure rules, which preclude most motions;

however, motions for default judgement may be brought at any time pursuant to Rule 298(3)(c) of the *Rules*.

[2] At variance with the claim itself, the relief sought on this motion is limited to three registered trademarks:

- a. OXYGENEO (TMA1032944) (TMA1192569)
- b. GENEEO+ (TMA1032928)
- c. Geneo+ design (TMA1032940)

[3] The Plaintiffs have tendered three affidavits in support of their motion.

[4] The Affidavit of Moshe Ben-Shlomo sworn on October 20, 2025, describes the ownership of the trademarks and their authorized use as well as the infringement by the Defendant. He also outlines the steps taken by the Plaintiffs to enforce their trademark and the harm that the Defendant's activities have caused, including its violation of the Medical Devices Regulations.

[5] The Affidavit of Mark Rubin sworn on October 28, 2025, asserts that the Defendant is not authorized to use the trademarks at issue, and that the devices and products depicted on the Defendant's website are counterfeit; and their manufacture and distribution was not authorized.

[6] The Affidavit of Felix Breton sworn on November 7, 2025, exhibits the requests to Facebook and Instagram to remove the Defendant's infringing posts and the confirmation of removal as well as a government website containing the Ontario pre- and post-judgement interest rates. Mr. Breton also asserts that the legal fees in the action exceed \$20,692 before taxes.

[7] To succeed on a motion for default judgement pursuant to Rule 210, the Plaintiffs must (a) establish that the Defendant failed to file a statement of defence within the time prescribed by the *Rules* or an Order of the Court; and (b) establish all elements of their claims on a balance of probabilities. As the granting of such an order is discretionary, the Court must scrutinize the evidence with care and the evidence must be sufficiently clear, convincing and cogent to satisfy the balance of probabilities test: *Trimble Solutions Corporation v. Quantum Dynamics Inc.*, 2021 FC 63.

## II. Analysis

### A. *The Defendant's Default*

[8] With respect to the first element, the Plaintiffs successfully brought a motion for substituted service of the statement of claim and the proof of service was filed in accordance with the Order of Associate Judge Molgat dated June 12, 2025. No statement of defence has been served and filed, nor has a motion been brought to extend the time to do so. Accordingly, I conclude that the Defendant is in default and the first part of the test has been met.

### B. *The Trademark Claims*

[9] With respect to the second part of the test, the Plaintiffs characterize the issues as relating to sections 2, 4, 19, 20 and 22 of the *Trademarks Act* as well as their entitlement to lump sum damages and costs.

[10] With respect to the ownership of the trademarks, I find that the Plaintiffs have established that Pollogen is the owner and that Dermaspark is the exclusive Canadian distributor of Pollogen's

products and an exclusive licensee of the trademarks in Canada. I note that Justice Furlanetto reached the same conclusions on the same evidence in *Dermaspark Products Inc. v. Aveena Cosmetic Clinic Inc.*, 2025 FC 1350.

[11] I also find that the Plaintiffs have demonstrated that the Defendant used their trademarks in association with its aesthetic services, as it used or displayed those trademarks in the performance and advertising of its services.

[12] The Affidavit of Moshe Ben-Shlomo provides evidence of the use of the trademarks in association with the aesthetic services offered by the Defendant. The evidence indicates that the Plaintiffs became aware of these activities, and the use of their trademarks on or around November 20, 2024. The Plaintiffs also provided screenshots of the Defendant’s website and social media pages, which clearly demonstrate several instances of use in advertising as well as depicting a counterfeit device that is advertised as the Plaintiffs’ OxyGeneo device.

[13] Sections 19 and 20 of the *Trademark Act* deal with infringement:

**Rights conferred by registration**

**19** Subject to sections 21, 32 and 67, the registration of a trademark in respect of any goods or services, unless shown to be invalid, gives to the owner of the trademark the exclusive right to the use throughout Canada of the trademark in respect of those goods or services.

**Infringement**

**Droits conférés par l’enregistrement**

**19** Sous réserve des articles 21, 32 et 67, l’enregistrement d’une marque de commerce à l’égard de produits ou services, sauf si son invalidité est démontrée, donne au propriétaire le droit exclusif à l’emploi de celle-ci, dans tout le Canada, en ce qui concerne ces produits ou services.

**Violation**

**20 (1)** The right of the owner of a registered trademark to its exclusive use is deemed to be infringed by any person who is not entitled to its use under this Act and who

**(a)** sells, distributes or advertises any goods or services in association with a confusing trademark or trade name;

**(b)** manufactures, causes to be manufactured, possesses, imports, exports or attempts to export any goods in association with a confusing trademark or trade name, for the purpose of their sale or distribution;

**(c)** sells, offers for sale or distributes any label or packaging, in any form, bearing a trademark or trade name, if

**(i)** the person knows or ought to know that the label or packaging is intended to be associated with goods or services that are not those of the owner of the registered trademark, and

**(ii)** the sale, distribution or advertisement of the goods or services in association with the label or packaging would be a sale, distribution or advertisement in association with a confusing trademark or trade name; or

**20 (1)** Le droit du propriétaire d'une marque de commerce déposée à l'emploi exclusif de cette dernière est réputé être violé par une personne qui est non admise à l'employer selon la présente loi et qui :

**a)** soit vend, distribue ou annonce des produits ou services en liaison avec une marque de commerce ou un nom commercial créant de la confusion;

**b)** soit fabrique, fait fabriquer, a en sa possession, importe, exporte ou tente d'exporter des produits, en vue de leur vente ou de leur distribution et en liaison avec une marque de commerce ou un nom commercial créant de la confusion;

**c)** soit vend, offre en vente ou distribue des étiquettes ou des emballages, quelle qu'en soit la forme, portant une marque de commerce ou un nom commercial alors que :

**(i)** d'une part, elle sait ou devrait savoir que les étiquettes ou les emballages sont destinés à être associés à des produits ou services qui ne sont pas ceux du propriétaire de la marque de commerce déposée,

**(ii)** d'autre part, la vente, la distribution ou l'annonce des produits ou services en liaison avec les étiquettes ou les emballages constituerait une vente, une distribution ou une annonce en liaison avec une marque de commerce ou un

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| <p><b>(d)</b> manufactures, causes to be manufactured, possesses, imports, exports or attempts to export any label or packaging, in any form, bearing a trademark or trade name, for the purpose of its sale or distribution or for the purpose of the sale, distribution or advertisement of goods or services in association with it, if</p> | <p>nom commercial créant de la confusion;</p>   |
| <p><b>(i)</b> the person knows or ought to know that the label or packaging is intended to be associated with goods or services that are not those of the owner of the registered trademark, and</p>   | <p><b>d)</b> soit fabrique, fait fabriquer, a en sa possession, importe, exporte ou tente d'exporter des étiquettes ou des emballages, quelle qu'en soit la forme, portant une marque de commerce ou un nom commercial, en vue de leur vente ou de leur distribution ou en vue de la vente, de la distribution ou de l'annonce de produits ou services en liaison avec ceux-ci, alors que :</p>   |
| <p><b>(ii)</b> the sale, distribution or advertisement of the goods or services in association with the label or packaging would be a sale, distribution or advertisement in association with a confusing trademark or trade name.</p>   | <p><b>(i)</b> d'une part, elle sait ou devrait savoir que les étiquettes ou les emballages sont destinés à être associés à des produits ou services qui ne sont pas ceux du propriétaire de la marque de commerce déposée,</p> <p><b>(ii)</b> d'autre part, la vente, la distribution ou l'annonce des produits ou services en liaison avec les étiquettes ou les emballages constituerait une vente, une distribution ou une annonce en liaison avec une marque de commerce ou un nom commercial créant de la confusion.</p> |

[14] Based on my findings above, the conduct of the Defendant amounts to infringement; however, even if the marks were not identical to the trademarks, considering section 6(5) of the *Trademark Act*, I find that section 20(1)(a) would be satisfied.

[15] Section 22 of the *Trademark Act* prohibits an infringing use of trademarks that is likely to depreciate the value of their goodwill. In 2006, the Supreme Court of Canada outlined the four elements to establish a claim under section 22 in *Veuve Clicquot Ponsardin v. Boutiques Cliquot Ltee*, 2006 SCC 23, [Veuve Clicquot]:

1. A claimant's registered trademark was used by the defendant in connection with wares or services;
2. The claimant's registered trademark is sufficiently well known to have significant goodwill attached to it;
3. The claimant's mark was used in a manner likely to have an effect on that goodwill;
4. The likely effect would be to depreciate the value of its goodwill

[16] I am satisfied based on the evidence filed that the Plaintiffs have established the four factors set out in *Veuve Clicquot*:

1. They have registered trademarks that were used by the Defendant in association with its aesthetic services;
2. The trademarks used are sufficiently well known and have goodwill associated with them;
3. Through the Defendant's use of their trademarks, the Plaintiffs lost control over the trademarks, affecting the associated goodwill associated; and
4. The likely effect of the Defendant's use of the Plaintiffs' trademarks with a device and services not offered by the Plaintiffs was to depreciate the value of the goodwill associated with the marks.

### C. *Damages*

[17] Properly conceding the lack of evidence as to their actual loss, the Plaintiffs contend that they are entitled to compensatory damages at the high end of the lump-sum damages range, specifically, \$35,000. They further assert that each Plaintiff should be awarded this amount,

consistent with *DermaSpark Products Inc. v. O'Pure Distribution*, an unreported decision of Justice Gascon dated July 18, 2024.

[18] I note that the Plaintiffs' make no attempt to distinguish Justice Furlanetto's decision in *Aveena*, where she declined to award damages at the high end of the nominal range and also declined to double the damages on account of the two Plaintiffs:

“Considering all of the jurisprudence, the evidence before me, and in view of the fact that it is unclear if the infringing activity has continued beyond February 2025, I will award damages at the lower end of the scale in this case, in a total amount of \$15,000. I note that while the Plaintiffs assert that each Plaintiff should be entitled to damages, causing a doubling of the award, I do not agree. The agreement between *Dermaspark* and *Pollogen* indicates that *Dermaspark* alone is required to defend, enforce and protect the *Pollogen* Marks. While *Pollogen* has been added to the proceeding as trademark owner and is required to assist in that limited capacity, this involvement does not warrant a doubling of the damages awarded. Although the Plaintiffs refer to *O'Pure*, I note that separate damage awards were not provided to these same Plaintiffs in *Patel*.”

[19] The same agreement is in evidence on this motion as part of Exhibit MB-4 to the Affidavit of Moshe Ben-Shlomo, and accordingly, I decline to award double damages.

[20] I also note Justice Duchesne's decision in *Dermaspark Products Inc. v. Ipince (Dreamlook Beauty)*, 2025 FC 946, where he awarded \$10,000.00, citing the decision in *Teavana Corporation v. Teayama Inc.*, 2014 FC 372, which similarly awarded \$10,000, although in both those cases there was no component for damages for loss of goodwill.

[21] Also, with respect to the issue of quantum, I note the decision of the Federal Court of Appeal in *Patel v. Dermaspark Products Inc.*, 2025 FCA 145 at paras 27 and 28:

[27] And as a matter of law, the Federal Court correctly concluded that where the extent of infringement and the harm it caused is difficult to establish, lump sum damages (sometimes misdescribed as nominal damages), estimated as best as one can, may be appropriate. See *Penvidic Contracting Co. v. International Nickel Co. of Canada*, 1975 CanLII 6 (SCC), [1976] 1 S.C.R. 267 at 279-280; *Lululemon Athletica Canada Inc. v. Campbell et al.*, 2022 FC 194; *Ragdoll Productions (UK) Ltd. v. Jane Doe*, 2002 FCT 918 (CanLII), 2002 F.C.T. 918, [2003] 2 F.C. 120 (and see paras. 49-50 on the misdescription of these damages as “nominal”); *101100002 Saskatchewan Ltd. v. Saskatoon Co-operative Association Limited*, 2022 SKCA 12. Damages of this sort can only be awarded where there is “some evidence on which it can be concluded that the claimant sustained damage and some evidence as to the nature of the damage”: *0867740 B.C. Ltd. v. Quails View Farm Inc.*, 2014 BCCA 252 at para. 46; *Saskatoon Co-op* at para. 23. That standard is more than met here.

[28] The Federal Court observed (at para. 136) that the lost sale of even one of the respondents’ machines is \$22,000. We are in the realm of a “lost sale” because the appellants bought a counterfeit machine rather than buying the respondents’ machine. And the net revenue from the sale of the counterfeit products and services—revenue denied to the respondents—was around \$2,000 (at para. 146). In the end, the Federal Court awarded the respondents \$25,000 in compensatory damages, an amount barely beyond \$24,000. Not much at all was given for harm to reputation and goodwill. Even if we were to delve into this issue without affording the Federal Court any deference, these facts amply demonstrate the acceptability of the damages award.

[22] On this motion, there is similar evidence of the cost of the counterfeit machine in a purchasing agreement included in the Affidavit of Moishe Ben-Schlomo, indicating an approximate amount of \$22,000. Having considered all of the relevant factors and the applicable jurisprudence, I award lump-sum damages in the amount of \$25,000.

[23] Turning to an assessment of costs, The Plaintiffs request a lump sum for costs in the amount of \$10,346.00, representing 50% of the fees actually incurred. In *Nova Chemicals*, the Federal Court of Appeal confirmed that the lump-sum costs tend to range between 25% and 50% of the

actual fees. The Plaintiffs say that an award at the higher end of the scale is justified as they had to initiate legal proceedings to prevent the illegal use of their trademarks and that the Court should consider the Defendant's illegal and intentional behaviour in determining costs. Taking into consideration all of the relevant factors and jurisprudence, I exercise my discretion to award an amount equal to 30% of the fees incurred or \$6,207.60.

**JUDGMENT in T-1063-25**

**THIS COURT'S JUDGMENT is that:**

1. The Plaintiffs' motion for default judgement is granted in part.
2. The Defendant shall pay to the Plaintiffs damages in the amount of \$25,000.
3. The Plaintiffs are awarded costs of the motion to be paid by the Defendant in the amount of \$6,207.60.
4. All other requests in the motion are dismissed.

"Catharine Moore"  
Associate Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** T-1063-25

**STYLE OF CAUSE:** DERMASPARK PRODUCTS INC. ET AL. v.  
AMANDA OTTMANN ET AL.

**PLACE OF HEARING:** JUDGMENT ON MOTIONS BASED ON WRITTEN  
REPRESENTATIONS

**DATE OF HEARING:** -

**REASONS FOR JUDGMENT  
AND JUDGMENT:** MOORE A.J.

**DATED:** JANUARY 8, 2026

**SOLICITORS OF RECORD:**

Santiago A. velar Alexiou  
Pinto Legal  
Westmount (Quebec)

FOR THE PLAINTIFFS

FOR THE DEFENDANT