



Date: 20251106

Docket: T-627-23

St. John's, Newfoundland and Labrador, November 6, 2025

PRESENT: Associate Judge Trent Horne

BETWEEN:

**TOYOTA JIDOSHA KABUSHIKI KAISHA
TRADING AS TOYOTA MOTOR CORPORATION
AND TOYOTA CANADA INC.**

Plaintiffs

and

MARRAND AUTO INC.

Defendant

ORDER AND REASONS

I. Background

[1] This is the defendant's second motion to strike the statement of claim without leave to amend.

[2] The plaintiffs [Toyota] received notice from the Canada Border Services Agency [CBSA] that a shipment of suspected counterfeit Toyota automotive parts had been detained. The owner and consignee of the shipment was the defendant.

[3] Toyota undertook an inspection of the detained goods. It does not claim that the automotive parts bearing the TOYOTA trademarks are counterfeit or were put into commerce without the consent of the trademark owner. Rather, Toyota alleges that the merchandise obtained by the defendant is “unauthorized.”

[4] The allegations as to why these goods are “unauthorized,” and therefore infringing, have evolved. The original statement of claim emphasized the fact that authentic Toyota merchandise comes with a warranty provided by the plaintiffs, however the merchandise is only subject to a Toyota Canada warranty if purchased from an authorized Toyota dealer. Since the defendant is not an authorized dealer, Toyota argued that the parts sold by the defendant were therefore unauthorized, and that consumers would be misled because there is an implied representation of warranty by the defendant. In general terms, Toyota alleged that the defendant was passing off this unauthorized merchandise as authentic Toyota merchandise (*ie* with a warranty), and that its trademark rights had therefore been infringed.

[5] The statement of claim was amended to add allegations that the defendant breached certain sections of the *Competition Act*, RSC 1985, c C-34 [*Competition Act*].

[6] Upon receipt of the amended statement of claim, the defendant asserted that there were no allegations that the Toyota merchandise is counterfeit. Since the goods were put into commerce with the consent of the trademark owner and lawfully acquired, the defendant says it is engaged in the resale of grey goods, and that such activities cannot be prohibited under the *Trademarks Act*, RSC 1985, c T-13 [*Trademarks Act*].

[7] The defendant brought a motion to strike the amended statement of claim without leave to amend.

[8] At the hearing of the motion, Toyota expanded on the allegations that the merchandise was not shipped in an approved manner, claiming that the goods were damaged, and that the sale of damaged automotive parts could constitute a risk to public safety.

[9] I granted the defendant's motion in part (*Toyota Jidosha Kabushiki Kaisha (Toyota Motor Corporation) v Marrant Auto Inc*, 2024 FC 1776). Claims based on the *Competition Act* were struck without leave to amend. So were claims based on subsection 7(c) of the *Trademarks Act*.

[10] Toyota was permitted to further amend the statement of claim. The test for passing off requires a plaintiff to establish: the existence of goodwill; deception of the public due to a misrepresentation; and actual or potential harm to the plaintiff (*Ciba-Geigy v Apotex Inc*, 1992 CanLII 33 (SCC), [1992] 3 SCR 120 at 132). I concluded that it was arguable that a damaged and unsafe car part bearing TOYOTA branding, being presented to a consumer expressly or by implication as being of the same quality as what would be sourced from a Toyota dealer, could constitute a misrepresentation that pertains to a trademark (para 33). I also concluded that it was arguable that misrepresentation could be based on claims of implied warranty – *ie* that consumers would believe that TOYOTA parts purchased from the defendant came with a Toyota warranty, when that is not the case (para 39).

[11] The defendant appealed the order; the appeal was dismissed (*Toyota Jidosha Kabushiki Kaisha (Toyota Motor Corporation) v Marrant Auto Inc*, 2025 FC 1105).

[12] The defendant further appealed to the Federal Court of Appeal (Court file A-242-25). That appeal is pending. The parties have filed their memoranda of fact and law; a hearing date has not been fixed.

[13] Toyota served and filed a fresh as amended statement of claim [Claim] on December 6, 2024. The defendant has brought a further motion to strike, or in the alternative for particulars.

II. Law on Motions to Strike

[14] The legal principles applying to motions to strike are well known. The threshold to strike a claim is a high one.

[15] To strike a statement of claim it must be plain and obvious, assuming the facts pleaded to be true, that the pleading discloses no reasonable cause of action. It needs to be plain and obvious that the action is certain to fail because it contains a radical defect (*R v Imperial Tobacco Canada Ltd*, 2011 SCC 42 (“*Imperial Tobacco*”) at para 17). Pleadings must be read as generously as possible (*Atlantic Lottery Corp Inc v Babstock*, 2020 SCC 19 at paras 88–90).

[16] A motion to strike is a tool that must be used with care. The law is not static and unchanging. Actions that yesterday were deemed hopeless may tomorrow succeed. On such a

motion, the Court must rather ask whether, assuming the facts pleaded are true, there is a reasonable prospect that the claim will succeed. The approach must be generous and err on the side of permitting a novel but arguable claim to proceed to trial (*Imperial Tobacco* at para 21; *La Rose v Canada*, 2023 FCA 241 at para 109).

[17] To disclose a reasonable cause of action, a claim must: (a) allege facts that are capable of giving rise to a cause of action; (b) disclose the nature of the action which is to be founded on those facts; and (c) indicate the relief sought, which must be of a type that the action could produce and the court has jurisdiction to grant (*Oleynik v Canada (Attorney General)*, 2014 FC 896 at para 5).

III. Analysis

[18] While the defendant's notice of motion identifies specific paragraphs of the Claim that it says should be struck, the practical consequence of the relief sought would strike the entirety of the Claim without leave to amend.

[19] The Claim (para 26) refers to a shipment of 105 packages of automotive spare parts that were interdicted by CBSA in March 2023. The Claim asserts that these parts were inspected by a Toyota representative.

[20] The Claim goes on to describe how the parts were not shipped in a manner that is approved by Toyota, and how the handling and shipment of these parts differed from Toyota's practices and procedures, including a Parts Handling Guide. The only material facts in the Claim

describing specific damage to the goods is in respect of bumper covers. It is alleged that these bumper covers were “improperly and unsafely packed” and this caused “dents, scratches, warping, and cracking” (para 28).

[21] Recall, on the first motion to strike, that Toyota relied on the threat to public safety as constituting misrepresentation for the purposes of passing off. At the hearing of this motion, Toyota confirmed that the nature of the plaintiffs’ claim is a public safety issue. It was also confirmed that Toyota’s claims based on implied warranty do not extend to every TOYOTA part sold by the defendant, rather those that are damaged.

[22] The Claim does not contain an allegation or material facts that that these bumper covers, or any of the 105 packages that comprise what is defined as the Unauthorized TOYOTA Parts sold by the defendant, are damaged in a material way, are unsafe, or constitute a risk to public safety. What is alleged is:

- a) As detailed herein, the plaintiffs are, therefore, unable to confirm whether the Unauthorized TOYOTA Parts are dangerous or safe for use in a consumer’s vehicle (para 27);
- b) Furthermore, the Defendant’s unauthorized shipping practices and procedures increased the likelihood that the Unauthorized TOYOTA Parts were damaged during transit and may constitute a risk to public safety. Further, and without limitation, the inspection confirmed that one or more of the Unauthorized TOYOTA Parts were damaged during transit due to the use of the Defendant’s

unsafe shipping practices and procedures, rendering the Unauthorized TOYOTA Parts potentially unsafe for use in vehicles (para 29); and

- c) Additionally, the Defendant's Unauthorized TOYOTA Parts have been found to be damaged and potentially unsafe due to unauthorized shipping and handling practices and procedures, as detailed in paragraph 28 (para 36).

[Emphasis added.]

[23] There is a disconnect as to what Toyota says this action is about (public safety) and what the Claim says (that Toyota is unable to confirm whether the parts are dangerous or not). At best, the allegations in the Claim describe cosmetic damage to a sub-set of the goods detained by CBSA and speculation that there is some potential that they could be unsafe because of the way they were shipped. The Claim does not explain how or why the dents, scratches, warping, and cracking that may be present on the bumper covers renders them unsafe, or how any of the other goods are unsafe for use by consumers.

[24] On the first motion to strike, I had great difficulty accepting that non-compliance with a shipping requirement alone could constitute a representation or misrepresentation to consumers. If that was the case, brand owners could create misrepresentation by the stroke of a pen by designating specific, likely confidential, shipping obligations, and then taking action against resellers who did not comply with those obligations (para 31). The Claim emphasizes that the parts received by the defendant were not shipped in accordance with Toyota policies and procedures but does not adequately inform the defendant as to how that results in an unsafe part

being sold to consumers. Non-compliance with Toyota's shipping protocols alone is insufficient to constitute misrepresentation.

[25] Toyota argues that while it had access to the goods detained by CBSA, it has not had the opportunity to test these parts. I am not satisfied that this is an answer to the lack of material facts in the Claim, or that requiring Toyota to provide this information would require it to plead evidence. Either Toyota has reasonable grounds to believe that the TOYOTA branded parts received and sold by the defendant are damaged in a material way and unsafe or it does not. If it has that belief, it must articulate why. If it is unable to articulate that belief, as this Court has said, "an action at law is not a fishing expedition and a plaintiff who starts proceedings simply in the hope that something will turn up abuses the court's process" (*Painblanc v Kastner*, (1994), 58 CPR (3d) 502 at paragraph 4).

[26] Having regard to all the above, I am not satisfied that the Claim discloses a cause of action. It must be struck.

[27] Leave to amend may be denied only if it is plain and obvious that the defect cannot be cured by amendment (*Simon v Canada*, 2011 FCA 6 at paras 8 and 15).

[28] While I am hesitant to grant Toyota an opportunity to further amend its pleading, which will result in a fourth version of the statement of claim, I am not satisfied that it is plain and obvious that the defects cannot be cured by amendment. Toyota must, however, provide material facts explaining its belief as to how and why the parts sold by the defendant are in fact unsafe.

IV. Storage Fees

[29] The defendant renews its request for payment of damages pursuant to section 51.12 of the *Trademarks Act*. Since the proceeding has not been dismissed or discontinued, these fees are not payable. The motion in this respect is dismissed.

V. Costs

[30] The parties are encouraged to reach an agreement on the cost consequences of the motion. If an agreement cannot be reached, concise submissions may be filed.

ORDER in T-627-23

THIS COURT ORDERS that:

1. The fresh as amended statement of claim is struck, with leave to amend.
2. Any further fresh as amended statement of claim shall be served and filed within 15 days of the date of this order.
3. If the parties are unable to agree on costs, the defendant shall serve and file submissions, not to exceed five (5) pages, within 7 days of the date of this order. The plaintiffs shall serve and file responding submissions, not to exceed five (5) pages, within 7 days of receipt of the defendant's submissions.
4. The parties shall write to the Court, preferably jointly, within 20 days of the date of this order with a proposed timetable.

"Trent Horne"
Associate Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-627-23

STYLE OF CAUSE: TOYOTA JIDOSHA KABUSHIKI KAISHA TRADING
AS TOYOTA MOTOR CORPORATION AND
TOYOTA CANADA INC. v MARRAND AUTO INC.

PLACE OF HEARING: HELD BY WAY OF VIDEOCONFERENCE

DATE OF HEARING: OCTOBER 30, 2025

ORDER AND REASONS: HORNE A.J.

DATED: NOVEMBER 6, 2025

APPEARANCES:

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