

Federal Court



Cour fédérale

Date: 20200923

Docket: T-1861-19

Citation: 2020 FC 925

Toronto, Ontario, September 23, 2020

PRESENT: Mr. Justice A.D. Little

BETWEEN:

NINTENDO OF AMERICA INC.

Plaintiff

and

JEAN TOMMIE BELLEY PARISEAU

Defendant

CONSENT JUDGMENT

CONSIDERING the Motion Record filed on behalf of the Plaintiff, Nintendo of America Inc. and of the Defendant, Jean Tommie Belley Pariseau dated July 17, 2020;

AND CONSIDERING the Affidavit of Louisa Chen, sworn on July 16, 2020;

AND CONSIDERING the consent of both the Plaintiff and the Defendant to the terms of this judgment, received by the Court on July 17, 2020;

AND CONSIDERING the correspondence from counsel for the Plaintiff dated September 15, 2020 in response to a Direction from the Court dated July 30, 2020;

THIS COURT:

1. Declares that the Defendant has infringed and is deemed to have infringed the rights of the Plaintiff, Nintendo of America Inc. (“Nintendo”), in and to the registered trademarks listed in Exhibit A of the Motion Record (the “NINTENDO Trademarks”), contrary to sections 19 and 20 of the *Trademarks Act*;
2. Declares that the Defendant has depreciated the value of the good will attaching the NINTENDO Trademarks, contrary to section 22 of the *Trademarks Act*;
3. Declares that the Defendant has directed public attention to his goods in such a way as to cause or be likely to cause confusion in Canada between his goods and the goods of Nintendo, contrary to paragraph 7(b) of the *Trademarks Act*;
4. Declares that the Defendant has passed off his goods as and for those of Nintendo, contrary to paragraph 7(c) of the *Trademarks Act*;
5. Declares that the Defendant has infringed Nintendo’s rights in and to works owned by Nintendo, contrary to subsection 27(2), (2) and (2.11) of the *Copyright Act*;
6. Grants a permanent injunction restraining the Defendant, and any other person under his power or control, directly or indirectly, from:
 - i. Infringing NINTENDO’s exclusive rights in and to the NINTENDO Trademarks;
 - ii. Deprecating the value of the goodwill attaching to the NINTENDO Trademarks;

- iii. Directing public attention to any of the Defendant's goods in such a way as to cause or be likely to cause confusion between the goods of the Defendant and the goods of Nintendo;
 - iv. Passing off the Defendant's goods as and for those of Nintendo;
 - v. Advertising, distributing, offering for sale or selling his goods in association with the NINTENDO Trademarks, or any other trademarks confusing therewith; and
 - vi. Infringing Nintendo's copyrights in and to works owned by Nintendo.
7. Orders the Defendant to deliver up or destroy under oath, at his own expense, all goods, cartridges, components, internal boards, labels, packaging, advertising materials, signage, printed matter, including all plates, molds, matrices, and other material for producing or printing such items, and any other matter or materials in the possession, power or control of the Defendant that would offend any injunction granted herein;
 8. The Defendant shall disclose the full legal names and contact information of any and all sources of the Counterfeit Goods (shown at Exhibit B of the Motion Record) known to the Defendant;
 9. Orders the Defendant to pay to Nintendo damages in the amount of \$50,000.00, inclusive of HST; and
 10. Orders that Nintendo's action is otherwise dismissed without costs.

"Andrew D. Little"

Judge