



Date: 20221212

Docket: T-147-22

Citation: 2022 FC 1711

[ENGLISH TRANSLATION]

Montréal, Quebec, December 12, 2022

PRESENT: Mr. Justice Gascon

BETWEEN:

SANI BLEU INC.

Plaintiff

and

9269-6806 QUÉBEC INC.

Defendant

JUDGMENT AND REASONS

I. Overview

[1] In January 2022, the plaintiff, SANI BLEU INC. [Sani Bleu], brought an action against the defendant, 9269-6806 Québec Inc. [9269-6806 Québec], for passing-off under section 7 of the *Trademarks Act*, RSC 1985, c T-13 [TMA]. In its action, Sani Bleu is seeking declaratory relief against 9269-6806 Québec to prohibit it from using names and trademarks that infringe upon the SANI BLEU mark [SANI BLEU Mark] under which Sani Bleu has operated its

business and has offered its goods and services since 1998. Sani Bleu is also claiming compensatory damages and costs.

[2] Because 9269-6806 Québec did not file a statement of defence, Sani Bleu is now turning to the Court through a motion under subsection 210(1) of the *Federal Courts Rules*, SOR/98-106 [Rules], for a default judgment against 9269-6806 Québec.

[3] When dealing with a motion for default judgment, the Court must answer two questions: (1) is the defendant actually in default; and (2) is there sufficient evidence to support the plaintiff's claim (*Canada v Zielinski Brother's Farm Inc*, 2019 FC 1532 at para 1; *Chase Manhattan Corp v 3133559 Canada Inc*, 2001 FCT 895).

[4] For the reasons that follow, I am allowing in part Sani Bleu's motion for default judgment.

II. **Background**

A. ***Facts***

[5] Sani Bleu sells and leases portable and mobile toilets, an industry in which it has a significant market share in the province of Quebec. As part of its activities, Sani Bleu has adopted the corporate name "Sani Bleu Inc." and has always presented and marketed its goods and services under the SANI BLEU Mark. The company has operated under the name Sani Bleu Inc. since May 27, 1998. However, the SANI BLEU Mark is not registered with the Canadian Intellectual Property Office. Sani Bleu filed an application for registration of the SANI BLEU

Mark and the SANI BLEU LOGO trademark on May 14, 2021, but this application for registration is still pending.

[6] For its part, 9269-6806 Québec sells and distributes disinfectant and hygiene products.

[7] In March 2021, Joël Fournier, President and CEO of Sani Bleu, discovered the existence of 9269-6806 Québec and found that this company markets hand sanitizers and other sanitary products under the names “SaniBleu” and “SaniBlue” in Quebec. He then learned that 9269-6806 Québec has been using these marks since May 2020 and that it filed an application for registration with the Canadian Intellectual Property Office for the “SaniBlue & Design” mark in association with hand sanitizers. This application for registration bearing number 2030220 was accepted and published on June 15, 2022.

[8] On May 20, 2021, Sani Bleu filed a request with Quebec’s Registraire des entreprises to prevent the names “SaniBleu” and “SaniBlue” from being used by 9269-6806 Québec on the ground that they create confusion with its corporate name, Sani Bleu Inc. This request was granted by the Registraire des entreprises on January 18, 2022, without challenge from 9269-6806 Québec. The Registraire des entreprises then ordered 9269-6806 Québec to change or replace its “SaniBleu” and “SaniBlue” names and to cease using them.

[9] On July 28, 2022, Sani Bleu also filed a statement of opposition to the registration of the “SaniBlue & Design” trademark by 9269-6806 Québec with the Registrar of Trademarks.

[10] Meanwhile, on June 7, 2021, Sani Bleu served 9269-6806 Québec with a demand dated June 2, 2021, to which 9269-6806 Québec did not reply.

[11] On January 26, 2022, Sani Bleu filed its statement of claim with the Court in this case and, after an unsuccessful attempt on January 28, served it on 9269-6806 Québec on January 31, 2022. At the time the action was brought, 9269-6806 Québec was still announcing and selling its goods in association with the names “SaniBleu” and “SaniBlue” and promoting them on its website and Facebook page.

[12] 9269-6806 Québec has not provided any reply or defence to Sani Bleu’s action.

[13] On September 13, 2022, the Court issued a notice of status review [Notice]. Sani Bleu replied to it by letter on September 26, 2022. 9269-6806 Québec has not filed any representations in response to the Notice with the Court.

[14] On November 10, 2022, following a Court order dated October 28, 2022, Sani Bleu filed this motion for default judgment. Sani Bleu’s motion is supported by an affidavit endorsed by Mr. Fournier. It was served on 9269-6806 Québec on November 8, 2022.

[15] By letter dated November 17, 2022, counsel for Sani Bleu requested that the Court hold an in-person hearing so that Sani Bleu could make oral representations on its motion for default judgment. This hearing was held on December 8, 2022.

B. *Order sought*

[16] In its motion, Sani Bleu is asking the Court to:

[TRANSLATION]

1. DECLARE that the plaintiff is the owner and has the exclusive right to use the SANI BLEU trademark (hereinafter the “MARK”) in association with the leasing of portable toilets; the

leasing of mobile toilets; the sale of mobile and portable toilets; advisory services regarding the lease, sale and installation of mobile and portable toilets; the installation, maintenance and cleaning of mobile and portable toilets; the installation, maintenance and cleaning of sanitary trailers containing mobile and portable toilets; the leasing and delivery of sanitary trailers containing mobile toilets; and the leasing of trucks and trailers for transporting mobile and portable toilets;

2. DECLARE that the defendant has infringed the plaintiff's exclusive rights to the MARK and directed public attention to its goods, services or business in such a way as to cause or be likely to cause confusion in Canada, at the time it commenced so to direct attention to them, between its goods, services or business and the goods, services or business of the plaintiff;

3. ORDER the defendant, its directors, officers, servants and agents, as well as any other persons who are aware of this injunction, to:

(a) Stop using in any way for any purpose or permitting the use of either the SANIBLUE trade name or any other trade name, expression, domain name, trademark or other label containing the combination of words SANI and BLEU and/or the combination SANI and BLUE and/or SANI BLU in any way whatsoever and in any form whatsoever in association with any type of sanitation and/or hygiene goods and services and/or any other related goods and services, including, but not limited to, hand sanitizers;

(b) Stop using, as a trade name, name, expression, trademark or other mark, any name, expression, mark or other label that is likely to cause confusion with the plaintiff's MARK in association with any type of sanitation and/or hygiene goods and services and/or any other related goods and services, including, but not limited to, hand sanitizers;

(c) Not use any trade name, trademark or other name causing or likely to cause confusion with the plaintiff's MARK or use or allow to be used any trade name, trademark or other name causing or likely to cause confusion in Canada between the plaintiff's goods, services and business and those of the defendant;

(d) Stop directing public attention to its goods, services or business in such a way as to cause or likely cause confusion

with the plaintiff's goods and services through the use of a trade name, domain name, trademark or other name causing or likely to cause confusion with the MARK, including, but not limited to, the SANIBLUE trade name; and

(e) Stop all importation, sale, distribution and promotion of sanitation and/or hygiene goods marketed in association with the SANIBLUE trade name or in association with any trade name, trademark or other name containing the combination of words SANI and BLEU and/or the combination SANI and BLUE and/or SANI BLU or any other name, expression or mark in a such a way as to cause or likely to cause confusion with the MARK;

4. ORDER the defendant to deliver up to the plaintiff, at the defendant's own expense, within 30 days of the judgment, any inventory, products and packaging under its control or in its possession bearing the SANIBLUE trademark or any other mark containing the combination of words SANI and BLEU and/or the combination of SANI and BLUE and/or SANI BLU or that would otherwise violate the injunction to be made by this honourable Court and allow the plaintiff, by said order, to destroy said inventory, products and packaging at the defendant's expense;
5. ORDER the defendant to withdraw its application for registration bearing number 2030220 with the Canadian Intellectual Property Office;
6. DIRECT the defendant to pay the plaintiff monetary compensation for damages suffered by the plaintiff or, alternatively, at the plaintiff's option, for profits unlawfully made by the defendant and ORDER the defendant to report the profits that it made following the sale of any good in association with the SANIBLUE trademark or any other mark containing the combination of words SANI and BLEU and/or the combination SANI and BLUE and/or SANI BLU, at the plaintiff's option;
7. ISSUE an order directing the defendant to pay the plaintiff prejudgment and judgment interest pursuant to sections 36 and 37 of the *Federal Courts Act*, RSC 1985, c F-7;
8. ISSUE an order directing the defendant to pay the costs in full; and
9. ISSUE any other order that this honourable Court deems appropriate to grant the plaintiff in the circumstances of this case.

III. Analysis

[17] On a motion for default judgment pursuant to section 210 of the Rules, all the allegations in the statement of claim are taken to be as denied (*Ragdoll Productions (UK) Ltd v Doe*, 2002 FTC 918 at paras 23–24). To obtain a default judgment, a plaintiff must demonstrate two things. The plaintiff must first establish that the defendant was served with the statement of claim and has not filed a statement of defence within the deadline specified in section 204 of the Rules. Second, the evidence must allow the Court to find, on a balance of probabilities, that the plaintiff has established the allegations made in its statement of claim and its entitlement to the relief it is seeking (*Trimble Solutions Corporation v Quantum Dynamics Inc*, 2021 FC 63 [*Trimble*] at para 35; *Teavana Corporation v Teayama Inc*, 2014 FC 372 [*Teavana*] at para 4; *Louis Vuitton Malletier SA v Yang*, 2007 FC 1179 at para 4).

[18] As is the case in all civil cases, the onus is on the plaintiff to establish its case on a balance of probabilities with sufficiently clear, convincing and cogent evidence (*FH v McDougall*, 2008 SCC 53 at paras 45–46; *NuWave Industries Inc v Trennen Industries Ltd*, 2020 FC 867 at paras 17–19).

A. ***9269-6806 Québec's default***

[19] The first component is easy to dispose of. Sani Bleu has demonstrated that 9269-6806 Québec was served the statement of claim and did not file a statement of defence within the 30-day period provided for in section 204 of the Rules. I would add that, although the Rules do not require it, Sani Bleu even made sure to serve 9269-6806 Québec with this motion for default

judgment. In the circumstances, I am satisfied that 9269-6806 Québec is in default and that Sani Bleu has therefore met the first test for default judgment.

B. *Passing-off*

[20] With respect to the second element, the issue to be determined by the Court is as follows: does Sani Bleu's evidence demonstrate, on a balance of probabilities, that the actions of 9269-6806 Québec constitute passing-off, contrary to the TMA.

(1) Legal framework

[21] Paragraph 7(b) of the TMA, which codifies the common law tort of passing-off, prohibits a person from “direct[ing] public attention to their goods, services, or business in a manner likely to cause confusion between them and the goods, services, or business of another” (*H-D USA, LLC v Varzari*, 2021 FC 620 [*H-D USA*] at para 33). In order to be granted the relief for passing-off, a plaintiff must first prove that it has a valid and enforceable “trademark” within the meaning of the TMA, which section 2 defines as “a sign or combination of signs that is used or proposed to be used by a person for the purpose of distinguishing or so as to distinguish their goods or services from those of others”. The passing-off action also requires evidence of three other factors: (1) the existence of goodwill; (2) deception of the public due to a misrepresentation; and (3) actual or potential damage (*Kirkbi AG v Gestions Ritvik Inc*, 2005 SCC 65 at paras 66–69; *H-D USA* at para 33).

(2) Sani Bleu's evidence

a) *The trademark*

[22] Sani Bleu must first prove possession of a valid and enforceable “trademark” within the meaning of the TMA, whether registered or unregistered, at the time 9269-6806 Québec first began directing public attention to its own goods and services (*Sandhu Singh Hamdard Trust v Navsun Holdings Ltd*, 2019 FCA 295 [*Hamdard Trust*] at para 39).

[23] Given the definitions of “trademark” and “use” in sections 2 and 4 of the TMA, the evidence must show that Sani Bleu used the SANI BLEU Mark for the purpose of distinguishing its wares or services from those of others. Upon reading Mr. Fournier's affidavit, I am satisfied that this has been done with clear, convincing and cogent evidence. In fact, Mr. Fournier has established that Sani Bleu has been operating under this name since May 1998 and that it has always, in a continuous, uninterrupted manner, presented and marketed its goods and services under the SANI BLEU Mark. It has been using the same logo since the start of its commercial activities in 1998, which it has displayed visibly on all its goods—namely portable and mobile toilets—on its trailers, delivery trucks and maintenance vans, on employee uniforms and on the invoices and delivery receipts that it issues to its customers. In its affidavit, Mr. Fournier provided several examples showing the use of the SANI BLEU Mark at construction sites in Quebec and at major events. This use dates back to the very beginning of Sani Bleu's commercial activities.

[24] The evidence also establishes that the SANI BLEU Mark is known to the public as being associated with the quality of Sani Bleu's goods and services. The use of the SANI BLEU Mark

has thus allowed Sani Bleu to build up an enviable reputation in sanitation and hygiene in Quebec.

[25] I therefore find that Sani Bleu had valid and enforceable trademarks, although not registered, at the time when 9269-6806 Québec started its activities.

b) *The existence of goodwill*

[26] The existence of goodwill is established by evidence of a distinctive mark that enjoys a certain reputation. To determine the existence of goodwill for the purposes of passing-off, factors such as distinctiveness, length of use, sales volumes, advertising and marketing are relevant (*Subway IP LLC v Budway, Cannabis & Wellness Store*, 2021 FC 583 [*Subway*] at para 33, citing *Hamdard Trust* at para 48). The ultimate question is whether the mark in question is distinctive and possesses reputation (*H-D USA* at para 40).

[27] I will pause here for a moment to point out that, although the SANI BLEU Mark is not yet a registered mark, this does not prevent Sani Bleu from benefiting from the relief for passing-off, which protects both registered and unregistered trademarks (*H-D USA* at para 33).

[28] Following my review of Mr. Fournier's affidavit, I am satisfied that Sani Bleu has established goodwill for its mark. The adduced evidence reveals that the SANI BLEU Mark has been used continuously since 1998, i.e., for almost 25 years. Sani Bleu submitted several items of evidence to demonstrate continuous use of its mark and the reputation it has gained over the years. The submitted invoices show that Sani Blue has provided its goods and services at several construction sites and major events throughout Quebec. The evidence also establishes that Sani Bleu has some social media presence and carries out some marketing and promotional activities,

such as advertising and event sponsorship, using the SANI BLEU Mark. Thus, Sani Bleu has a significant place in Quebec's market for sanitation and hygiene goods and services.

[29] In short, I am satisfied that Sani Bleu has established that its mark is distinctive, that it has a certain reputation in Quebec and that there is goodwill associated with the SANI BLEU Mark.

c) *Deception of the public*

[30] Public deception due to passing-off is assessed using the test of likely confusion between the trademarks in question (*Subway* at para 34). Confusion is assessed from the perspective of the casual consumer somewhat in a hurry and that consumer's first impression upon seeing a trademark, without pausing to give the matter any detailed consideration or scrutiny or examining the trademark. If two trademarks are likely to make this consumer think that they both come from the same person, there is confusion (*Veuve Clicquot Ponsardin v Boutiques Clicquot Ltée*, 2006 SCC 23 [*Veuve Clicquot*] at paras 18–20).

[31] The Court assesses confusion by having regard to all the surrounding circumstances, including the factors set out in subsection 6(5) of the TMA. Those include the inherent distinctiveness of the trademarks and the extent to which they have become known, the length of time the trademarks have been in use, the nature of the goods, services or business, the nature of the trade, and the degree of resemblance between the trademarks (*Veuve Clicquot* at para 21; *H-D USA* at para 7).

[32] As concluded by the Registraire des entreprises, the "SaniBleu" mark used by 9269-6806 Québec consists of a name identical to that used by Sani Bleu. The Sani Bleu and 9269-

6806 Québec marks therefore have a very high degree of resemblance. The name itself of the “SaniBleu” mark is confusing. And the English-language name “SaniBlue” used by 9269-6806 Québec also creates confusion since it is a simple translation of the “SaniBleu” mark.

[33] Although the logos of the SANI BLEU Mark and the “SaniBleu” and “SaniBlue” marks of 9269-6806 Québec are distinct, the similarity between their names and the fact that these companies both operate in the sanitation and hygiene goods and services sector in Quebec can only lead to confusion for a casual consumer somewhat in a hurry who does not dwell on the differences between these two marks.

[34] Additionally, and as stated above, Sani Bleu has been operating under this name since 1998, while 9269-6806 Québec has only been marketing its goods under the “SaniBleu” and “SaniBlue” names since May 2020. Sani Bleu is a company that has been known in Quebec in the sanitation goods and services industry for nearly 25 years. Although Sani Bleu and 9269-6806 Québec offer distinct goods and services, the goods offered by 9269-6806 Québec are confusing when we consider the nature of the services offered by Sani Bleu—particularly its leasing service for hand sanitizer dispensers. In short, the evidence submitted by Sani Bleu establishes that the marks used by 9269-6806 Québec create a risk of confusion in the minds of casual consumers.

[35] Having carefully examined the evidence, I am satisfied that the evidence submitted by Sani Bleu shows, on a balance of probabilities, that the use of the “SaniBleu” and “SaniBlue” marks by 9269-6806 Québec causes confusion among the public with respect to the SANI BLEU Mark.

d) *Actual or potential damage*

[36] In Mr. Fournier's affidavit, Sani Bleu makes no explicit argument as to its sales volumes or any actual or potential damages resulting from the use of the "SaniBleu" and "SaniBlue" marks by 9269-6806 Québec. Sani Bleu therefore does not explain why the use of these marks by 9269-6806 Québec is damaging for it. It also does not allege any loss of sales or profits arising from the activities of 9269-6806 Québec.

[37] However, it should be noted that the mere loss of control over reputation, image or goodwill can be sufficient to establish the damages required to support a claim in passing-off (*H-D USA* at para 42). I am of the opinion that, because Sani Bleu has no control over the quality of the goods sold by 9269-6806 Québec, the latter's goods offering is sufficient to demonstrate possible damages and a risk of damages resulting from a loss of control over Sani Bleu's reputation, image or goodwill.

[38] In light of the above, I therefore find that Sani Bleu has established the existence of all the elements required to support its claim in passing-off and unfair competition from 9269-6806 Québec.

C. *Relief sought*

[39] In terms of relief, Sani Bleu is seeking various forms of relief from the Court, including declaratory and injunctive relief, damages and costs.

(1) Declaratory relief

[40] In terms of declaratory relief, Sani Bleu is asking the Court to declare that it owns and has the exclusive right to use the SANI BLEU Mark in association with the commercial activities that it carries out in relation to portable and mobile toilets. Sani Bleu is also seeking a conclusion stating that 9269-6806 Québec contravened paragraph 7(b) of the TMA.

[41] I agree with Sani Bleu on the second item of declaratory relief sought. As demonstrated above, the evidence provided by Sani Bleu establishes that 9269-6806 Québec infringed on Sani Bleu's exclusive right to the SANI BLEU Mark in Quebec and directed public attention to its goods and services in such a way as to cause or be likely to cause confusion in Canada between its goods and services and those of Sani Bleu, in blatant contravention of paragraph 7(b) of the TMA.

[42] However, I am not persuaded that the Court can, as Sani Bleu would like, declare that Sani Bleu has the exclusive right to use the SANI BLEU Mark in association with its various commercial activities. This is a conclusion that would have a very similar effect as registration of a trademark has. In fact, section 19 of the TMA states that the registration of a trademark in respect of any goods or services "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". However, such a decision falls under the jurisdiction of the administrative authorities for trademarks. Incidentally, Sani Bleu has already filed an application for registration of the SANI BLEU Mark and the SANI BLEU LOGO trademark, and this application is still pending.

[43] In the circumstances, I am of the opinion that it is not appropriate for the Court to grant the first declaratory conclusion sought by Sani Bleu and that a statement that 9269-6806 Québec contravened the provisions of the TMA on passing-off is sufficient to clear the way for the other remedies sought by Sani Bleu.

(2) Injunctive relief

[44] With respect to injunctive relief, Sani Bleu is asking the Court to issue a permanent injunction against 9269-6806 Québec prohibiting it from infringing upon the SANI BLEU Mark and to order the handing over of the goods and packaging bearing the “SaniBleu” and “SaniBlue” names and marks so that they can be destroyed, as permitted by subsection 53.2(1) of the TMA.

[45] I agree with Sani Bleu on the need for this relief. I note that 9269-6806 Québec has never replied to Sani Bleu’s numerous communications or to the statement of claim filed before the Court in this case. In fact, Sani Bleu has already been forced to take many steps to counter the unfair competition from 9269-6806 Québec. Sani Bleu first sought relief from Quebec’s Registraire des entreprises to prevent the “SaniBleu” and “SaniBlue” names from being used by 9269-6806 Québec, a request the Registraire granted. However, 9269-6806 Québec has still not complied with this decision and continues to use the names “SaniBleu” and “SaniBlue”. Sani Bleu also filed an opposition to the registration of the “SaniBlue & Design” trademark by 9269-6806 Québec with the Registrar of Trademarks. Lastly, Sani Bleu had to initiate this action before the Court.

[46] The evidence on the record therefore demonstrates, clearly, convincingly and cogently, that 9269-6806 Québec does not appear to have any intention to stop using the “SaniBleu” and “SaniBlue” names and marks. Quite the contrary. In light of the facts described above and previous decisions of this Court in similar circumstances, I find that Sani Bleu is entitled to a permanent injunction prohibiting 9269-6806 Québec from infringing upon its SANI BLEU Mark and that it is also appropriate to order the delivery up or destruction of goods, packaging, labels or advertising material that feature the “SaniBleu” or “SaniBlue” names or marks (*H-D USA* at para 50; *Pick v 11180475 Alberta Ltd (The Queen of Tarts)*, 2011 FC 1008 [*Pick*] at para 54).

(3) Damages

[47] Sani Bleu is also seeking compensatory damages from the Court in the amount of \$25,000 because 9269-6806 Québec has profited from the SANI BLEU Mark for its own benefit and has ignored the decision of the Registraire des entreprises prohibiting it from using the “SaniBleu” or “SaniBlue” names.

[48] Damages, as with all aspects of a trademark claim, must be proved by the plaintiff (*Biofert Manufacturing Inc v Agrisol Manufacturing Inc*, 2020 FC 379 [*Biofert*] at para 208). I note that, in this case, the plaintiff has supplied no evidence on damages or Sani Bleu’s sales and profits.

[49] However, I recognize that 9269-6806 Québec has not participated in this proceeding and that Sani Bleu could therefore not properly assess the extent of its actual damages. It is well established though that the Court may award general or “symbolic” damages for the loss of goodwill, without proof of actual damages, when a defendant has failed to respond and submit a

statement of defence, as is the case here (*H-D USA* at paras 52–54; *Teavana* at para 39; *Pick* at paras 49–52). In fact, a defendant’s absence makes it difficult to prove actual damages.

[50] In *Biofert*, McVeigh J. provided a breakdown of some cases where the Court awarded symbolic damages in situations where there was insufficient proof of actual damages. This breakdown is divided into two categories of cases: those where the Court assigned a global, arbitrary value for the infringement and those where it assigned an approximate per-incident amount and multiplied it by the number of incidents. The damages claimed by Sani Bleu fall into the first category. *Biofert* also showcased that awarded amounts have varied from \$1,000 to \$25,000 depending on the circumstances of each case.

[51] I agree with Sani Bleu that, in light of the case law of this Court, it is permitted to receive so-called symbolic damages. The amount awarded is at the Court’s discretion, as there is no evidence to estimate more fairly the damages actually suffered. However, I note that the awarded amounts are generally in the range of \$10,000 to \$15,000 (*H-D USA* at paras 58–59; *Biofert* at Annex B(1)). The \$25,000 in damages sought by Sani Bleu are therefore at the higher end of damages usually awarded in similar circumstances.

[52] In this case, I find that some factors tend to suggest a lower degree of damages and therefore less compensation, namely the fact that 9269-6806 Québec offers goods that are distinct from Sani Bleu’s main goods and services, along with the relatively modest price of the goods sold by 9269-6806 Québec. On the other hand, however, the fact that 9269-6806 Québec uses the names “SaniBleu” and “SaniBlue” for its entire company weighs in favour of awarding more meaningful compensation. It is clear from the evidence that the goods bearing the “SaniBleu” or “SaniBlue” marks are the bulk, if not all, of the goods offered by 9269-

6806 Québec. In addition, the actions of 9269-6806 Québec and its persistent silence in response to Sani Bleu's efforts have forced Sani Bleu to seek multiple remedies to have its rights recognized with respect to the SANI BLEU Mark. I would also add that 9269-6806 Québec continues to use the names "SaniBleu" or "SaniBlue" despite the many efforts made by Sani Bleu to stop it from doing so.

[53] On the basis of all these considerations, the evidence before me and the case law, I find that \$15,000 in damages is reasonable.

[54] Sani Bleu is also seeking prejudgment and judgment interest. In my view, in light of the circumstances of this case, and recognizing that a plaintiff is entitled to be fully and fairly compensated for any losses suffered as a consequence of unfair competition from passing-off, I agree that both prejudgment and judgment interest should be awarded to Sani Blue in addition to the damages owed to it (*Trimble* at para 80).

[55] In light of sections 36 and 37 of the *Federal Courts Act*, RSC 1985, c F-7, and the circumstances of the case, I find that Sani Bleu is entitled to prejudgment interest on the award of general damages, not compounded, at the legal rate of 5% per year, from when Sani Bleu notified 9269-6806 Québec in writing on June 7, 2021. Sani Bleu is also entitled to judgment interest at an annual rate of 5%.

(4) Costs

[56] With respect to costs, Sani Bleu is asking that these be based on the fees actually incurred rather than on Tariff B. Sani Bleu is seeking to obtain an amount equal to 25% of legal costs actually incurred, as well as all its disbursements, totalling \$1,371.70. At the hearing before the

Court, counsel for Sani Bleu filed an additional exhibit showing the professional fees that have been incurred in addition to the amount mentioned in the notice of motion for default judgment. She also told the Court that the legal costs of \$16,897.47 initially mentioned in the notice of motion should be reduced somewhat. In light of this additional evidence and these adjustments, the actual legal costs incurred by Sani Bleu are approximately \$21,650. Twenty-five percent of these costs is therefore approximately \$5,415.

[57] I agree that as the successful party, and having been put to the commencement and completion of this action by the failure of 9269-6806 Québec to respond to its correspondence and the litigation, Sani Bleu is entitled to its costs. There is no reason to deviate from the usual rule that costs should follow the event. I also note that Sani Bleu presented detailed evidence of the legal costs and disbursements it incurred in this case. Lastly, I would point out that, in *H-D USA*, given the circumstances and the defendant's lack of cooperation, the Court granted a claim similar to that of Sani Bleu.

[58] Considering the evidence submitted, the arguments put forward by Sani Bleu and the factors set out in Rule 400 of the Rules, and exercising my discretion in this matter, I find that awarding a total lump sum of \$7,000 for costs is warranted in the circumstances.

IV. **Conclusion**

[59] For all these reasons, I am making a judgment declaring that there has been an infringement of Sani Bleu's trademarks and imposing a permanent injunction against 9269-6806 Québec to prohibit it from continuing to infringe Sani Bleu's trademarks. I also award general damages of \$15,000 and costs for a global amount of \$7,000.

JUDGMENT in T-147-22

THIS COURT’S JUDGMENT is that:

1. The motion for default judgment is allowed in part.
2. Through the sale and/or marketing of its products bearing the names or marks “SaniBleu” or “SaniBlue”, the defendant has infringed the plaintiff’s exclusive rights to the SANI BLEU trademark [MARK] and directed public attention to its goods, services or business in such a way as to cause or be likely to cause confusion in Canada between its goods, services or business and the plaintiff’s goods, services or business, in contravention of paragraph 7(b) of the *Trademarks Act*.
3. The defendant and its directors, officers, servants and agents, as well as any other persons who are aware of this injunction, are ordered to:
 - a. Stop using in any way for any purpose or permitting the use of either the “SaniBlue” trade name or any other trade name, expression, domain name, trademark or other label containing the combination of words SANI and BLEU and/or the combination SANI and BLUE and/or SANI BLU in any way whatsoever and in any form whatsoever in association with any type of sanitation and/or hygiene goods and services and/or any other related goods and services, including, but not limited to, hand sanitizers;
 - b. Stop using, as a trade name, expression, domain name, trademark or other mark, any name, expression, mark or other label that is likely to cause confusion with

the plaintiff's MARK in association with any type of sanitation and/or hygiene goods and services and/or any other related goods and services, including, but not limited to, hand sanitizers;

- c. Not use any trade name, trademark or other name bearing or likely to cause confusion with the plaintiff's MARK or use or allow to be used any trade name, trademark or other name bearing or likely to cause confusion in Canada between the plaintiff's goods, services and business and those of the defendant;
 - d. Stop directing public attention to its goods, services or business in such a way as to cause or likely cause confusion with the plaintiff's goods and services through the use of a trade name, domain name, trademark or other name causing or likely to cause confusion with the MARK, including, but not limited to, the "SaniBlue" trade name;
 - e. Stop all importation, sale, distribution and promotion of sanitation and/or hygiene goods marketed in association with the "SaniBlue" trade name or in association with any trade name, trademark or other name containing the combination of words SANI and BLEU and/or the combination SANI and BLUE and/or SANI BLU or any other name, expression or mark in such a way as to cause or likely to cause confusion with the MARK.
4. The defendant is ordered to deliver up to the plaintiff, at the defendant's own expense, within 30 days of this judgment, any inventory, goods and packaging under its control or in its possession bearing the name or trademark "SaniBlue" or any other name or mark

containing the combination of words SANI and BLEU and/or the combination of SANI and BLUE and/or SANI BLU or that would otherwise violate this injunction issued by the Court, and the plaintiff is permitted to destroy said inventory, products and packaging at the defendant's expense.

5. The defendant is ordered to withdraw its application for registration bearing number 2030220 with the Canadian Intellectual Property Office.
6. The defendant must pay the plaintiff general damages in the amount of \$15,000.
7. The defendant must pay the plaintiff prejudgment and judgment interest, not compounded, at an annual rate of 5% effective June 7, 2021.
8. The defendant must pay the plaintiff the costs of this case, which have been set at the lump sum of \$7,000, all inclusive.

“Denis Gascon”

Judge

Certified true translation
Johanna Kratz

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-147-22

STYLE OF CAUSE: SANI BLEU INC. v 9269-6806 QUÉBEC INC.

PLACE OF HEARING: MONTRÉAL, QUEBEC

DATE OF HEARING: DECEMBER 8, 2022

JUDGMENT AND REASONS: GASCON J.

DATED: DECEMBER 12, 2022

APPEARANCES:

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FOR THE PLAINTIFF

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