

Federal Court



Cour fédérale

**Date: 20110526**

**Docket: T-1210-09**

**Citation: 2011 FC 620**

**Ottawa, Ontario, May 26, 2011**

**PRESENT: The Honourable Mr. Justice Hughes**

**BETWEEN:**

**HARDY WAY LLC**

**Plaintiff**

**and**

**THE LITTLE BLUE BOX COMPANY LTD.  
and DEBBIE CRADDOCK**

**Defendants**

**REASONS FOR ORDER AND ORDER**

[1] The Plaintiff has made a motion for default Judgment against both Defendants, neither of whom has filed a Defence or any other document in this action.

[2] The action, as pleaded, alleges infringement of the Plaintiff's registered trade-mark number TMA 663,070 and other activities of the Defendants contrary to the provisions of sections 7(b) (c) and (d) and section 22(1) of the *Trade-Marks Act*, RSC 1985, c.T-13. All of the alleged wrongful

activity is predicated on the Defendants' "Ed Hardy Trade-mark". That trade-mark is defined in terms of the registration TMA 663,070, which is for the three words DON ED HARDY for use in association with wares described as:

*(1) Clothing, namely pants, skirts, children's and baby wear, sports wear, namely jeans, overcoats, shirts, blouses, t-shirts, bathing suits, sneakers, athletic shoes; bandanas for clothing; hats; caps; visors; belts for clothing.*

[3] The affidavit evidence filed in support of the motion shows that the three words DON ED HARDY appear on wares offered for sale by the Defendants in only three places, a hat label and disc as shown in two of the photographs appearing at paragraph 43 of the Carrillo affidavit, and on a hat label shown in one of the photographs at paragraph 51 of that affidavit. Other photographs show various graphical designs and, on occasion, the two words ED HARDY but not the three words DON ED HARDY as in the registered trade-mark or the "Ed hardy Trade-mark" as defined in the Amended Statement of Claim.

[4] There is no evidence directed to any specific quantum of damage. On the record there is simply Counsel's written argument that there is an early precedent in a different case where \$6,000.00 was awarded which, it is argued, should be subjected to an unsubstantiated inflationary figure to yield \$7,250.00. This is an unsatisfactory manner for assessment of damage.

[5] Given the state of the evidence, the Court can only give default judgment in respect of caps with an injunction and delivery up restricted to caps, and nominal damages in the order of \$500.00.

[6] Under the circumstances, the Court will permit the Plaintiff an opportunity to file further evidence and make further argument. There has been an inexplicable delay in the Court system in bringing this matter forward to me; therefore, Counsel will have sixty days to file further evidence and make further submissions, failing which Judgment will issue in the terms indicated above.

**ORDER**

**FOR THE REASONS PROVIDED:**

**THIS COURT ORDERS that:**

1. The Plaintiff shall be permitted sixty (60) days to file further evidence and make further submissions; and
  
2. The Registry is directed to return the file to me after the expiry of said sixty (60) days or earlier if further evidence and submissions are received before that time.

"Roger T. Hughes"

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Judge

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

**DOCKET:** T-1210-09

**STYLE OF CAUSE:** HARDY WAY LLC v. THE LITTLE BLUE BOX  
COMPANY LTD. and DEBBIE CRADDOCK

**MOTION IN WRITING CONSIDERED AT TORONTO, ONTARIO PURSUANT TO  
RULE 369**

**REASONS FOR ORDER  
AND ORDER:** HUGHES, J.

**DATED:** May 26, 2011

**WRITTEN REPRESENTATIONS BY:**

Lorne M. Lipkus and  
Georgina Starkman Danzig

FOR THE PLAINTIFF

N/A

FOR THE DEFENDANTS

**SOLICITORS OF RECORD:**

Kestenberg Siegal Lipkus LLP  
Barristers & Solicitors  
Toronto, Ontario

FOR THE PLAINTIFF

N/A

SELF-REPRESENTED  
DEFENDANTS