

Federal Court



Cour fédérale

**Date: 20230727**

**Docket: T-2470-22**

**Ottawa, Ontario, July 27, 2023**

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

**BETWEEN:**

**CANDELA CORPORATION**

**Plaintiff**

**and**

**NAJ AHMADI**

**Defendant**

**JUDGMENT ON CONSENT**

**UPON** informal motion in writing for Summary Judgment, brought on consent of the parties, dated July 24, 2023 [the “Joint Letter”];

**AND UPON** reviewing the Joint Letter and the parties’ joint submissions therein;

**AND UPON** considering that on October 24, 2022, the Canada Border Services Agency [“CBSA”] issued a Rights Holders Notice of Detention for Goods Suspected of Contravening IPR in respect of a device bearing the Plaintiff’s trademarks imported by the Defendant into Canada without the authority, licence or permission of the Plaintiff [the “Subject Goods”];

**AND UPON** considering that the Subject Goods are currently being detained at DHL Warehouse located at 130-4840 Miller Road, Richmond, BC, V7B 1K7 Canada [the “Warehouse”];

**AND UPON** considering that the CBSA instructed the Warehouse that the Subject Goods should not be released, re-manifested or disposed until further notice from the CBSA;

**AND UPON** considering that the CBSA informed the parties that it will not instruct the Warehouse to release the Subject Goods to the Plaintiff absent a Court Order;

**AND UPON** noting the agreement between the parties and the Warehouse that:

1. The Plaintiff is the owner in Canada of the following registered trademarks:  
CANDELA (TMA 737193), CANDELA & Design (TMA 1124162) and  
CANDELA & Design. Science. Results. Trust (TMA 1124161), collectively, the  
“CANDELA Trademarks”.
2. The Defendant admits that it has imported the Subject Goods without the consent, license, or permission of the Plaintiff.
3. The parties acknowledge that the Subject Goods is a counterfeit device.
4. The Defendant relinquishes all right, title and interest in and to the Subject Goods imported into Canada by the Defendant, wheresoever situated, to the extent any such right, title and interest exist.

5. The Defendant agrees to refrain from importing, offering for sale, displaying, advertising, selling, manufacturing, distributing, or otherwise dealing in goods not being that of the Plaintiff, bearing any one or more of the CANDELA Trademarks.
6. The Defendant undertakes to direct the Warehouse to take all steps necessary to release the Subject Goods to the Plaintiff or a designee of the Plaintiff.
7. Having spoken to the Warehouse regarding responsibility for costs and the Warehouse having represented that it shall not charge any fees for the storage and disposition of the Subject Goods between October 24, 2022 and the date on which the Subject Goods are received by the Plaintiff or a designee of the Plaintiff, the Defendant represents and acknowledges that the storage and disposition of the Subject Goods, including between October 24, 2022 and the date on which the Subject Goods are released to the Plaintiff or a designee of the Plaintiff, shall be at no cost to the Plaintiff or its designee.

**AND UPON** considering Rules 3 and 215 of the *Federal Courts Rules*, SOR/98-16 and, *mutatis mutandis*, the Federal Court of Canada's June 8, 2022 *Consolidated General Practice Guidelines*;

**AND UPON** noting the consent of the parties; and

**AND UPON** being satisfied that it is in the interests of justice that the requested relief be granted;

**THIS COURT ORDERS that:**

1. The motion is granted.
2. The Defendant is restrained from importing, offering for sale, displaying, advertising, selling, manufacturing, distributing, or otherwise dealing in goods not being that of the Plaintiff, bearing any one or more of the CANDELA Trademarks.
3. Upon service of this Order, the Defendant and any person(s) upon whom the Order is served, including the CBSA, the Warehouse, and their affiliates and contractors, shall forthwith surrender to the Plaintiff or a designee of the Plaintiff the Subject Goods, where situate.
4. Upon service of this Order, the Defendant and any person(s) upon whom the Order is served, including the CBSA, the Warehouse, and any affiliates and contractors, shall forthwith render any necessary assistance to surrender the Subject Goods to the Plaintiff or its designee at no cost to the Plaintiff or its designee.
5. The importation, storage, handling, transportation and disposition of the Subject Goods shall be at no cost to the Plaintiff or its designee.
6. There shall be no costs to this motion.

"Guy Régimbald"

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Judge