

Federal Court



Cour fédérale

**Date: 20210603**

**Docket: T-409-20**

**Citation: 2021 FC 542**

**Ottawa, Ontario, June 3, 2021**

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

**BETWEEN:**

**APPLE INC.**

**Plaintiff**

**and**

**ABDUL WASEAH  
OPERATING AS MOBILE Q**

**Defendant**

**ORDER AND REASONS**



**UPON CONSIDERING** the Plaintiff's *ex parte* motion for default judgment against the Defendant, brought pursuant to Rules 210 and 369 of the *Federal Courts Rules*, SOR/98-106 ("*Rules*");

**AND UPON BEING SATISFIED** that the Defendants have failed to serve and file a Statement of Defence within the time set out in Rule 204 of the *Rules*;

**AND UPON REVIEWING** the evidence and submissions of the Plaintiff;

**THE COURT ORDERS THAT** the Plaintiff's motion for default judgment is granted.

[1] I find the following Canadian registered trademarks are owned by the Plaintiff (collectively, the "Subject Trademarks"):

- (a)  (**APPLE DESIGN**) (TMA690,668);
- (b) **AIRPODS** (TMA989,948); and
- (c)  **5W USB Power Adapter** (TMA1,066,319).

[2] I find the Defendant, without the consent, license or permission of the Plaintiff, imported into Canada and sold goods bearing marks that a casual consumer somewhat in a hurry would likely confuse for the Subject Trademarks (*Veuve Clicquot Ponsardin v Boutiques Cliquot Ltée*, 2006 SCC 23 at para 20). Considering the factors enumerated under subsection 6(5) of the *Trademarks Act*, RSC 1985, c T-13 (the "*Act*"), I find the Defendant has infringed the exclusive rights of the Plaintiff to the use in Canada of the Subject Trademarks, contrary to sections 19 and 20 of the *Act*. In addition, I find the Defendant has imported into Canada counterfeit Apple merchandise, contrary to section 51.03 of the *Act*.

[3] In light of the above determinations, I order that the Defendant is restrained from offering for sale, importing, displaying, advertising, selling, manufacturing, distributing, or otherwise

dealing in merchandise not being that of the Plaintiff, bearing one or more of the Subject Trademarks.

**ORDER AND REASONS IN T-409-20**

**THIS COURT ORDERS that:**

1. The Plaintiff's motion for default judgment is granted.
2. The Defendant is restrained from offering for sale, importing, displaying, advertising, selling, manufacturing, distributing, or otherwise dealing in merchandise not being that of the Plaintiff, bearing one or more of the Subject Trademarks.

“Shirzad A.”

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Judge

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

**DOCKET:** T-409-20

**STYLE OF CAUSE:** APPLE INC. v ABDUL WASEAH OPERATING AS  
MOBILE Q

**PLAINTIFF'S *EX PARTE* MOTION IN WRITING PURSUANT TO RULE 369 OF  
THE *FEDERAL COURTS RULES***

**ORDER AND REASONS:** AHMED, J.

**DATED:** JUNE 3, 2021

**WRITTEN SUBMISSIONS BY:**

Lorne M. Lipkus  
David S. Lipkus

FOR THE PLAINTIFF

**SOLICITORS OF RECORD:**

Kestenberg Siegal Lipkus LLP  
Toronto, Ontario

FOR THE PLAINTIFF