

Federal Court



Cour fédérale

Date: 20121205

Docket: T-833-12

Citation: 2012 FC 1430

Ottawa, Ontario, December 5, 2012

PRESENT: The Honourable Mr. Justice Scott

BETWEEN:

THE DRIVING ALTERNATIVE INC

Plaintiff

and

AMANDA JARVIS dba KEYZ PLEEZZ

Defendant

REASONS FOR ORDER AND ORDER

I. Introduction

[1] This proceeding is an Action for trade-mark infringement, passing off and depreciation of goodwill wherein the Plaintiff alleges that the Defendant has infringed and continues to infringe the Plaintiff's registered trade-mark KEYS PLEASE, as the result of the Defendant's operation of an alternative driving service in association with the trade-mark and trade-name KEYZ PLEEZZ.

II. Procedural history

[2] A Statement of Claim was issued on April 24, 2012, against the Defendant.

[3] Immediately following the issuance of the Statement of Claim on April 24, 2012, Canadian Process Serving Ottawa [CPSO], a professional process serving organization, was contacted to have an agent located in Oshawa, Ontario, to effect service on the Defendant, Amanda Jarvis, doing business as KEYZ PLEEZZ, at 178 Beatty Avenue, Oshawa, Ontario, L1H 3B2, the business address given on the Defendant's Business Name Registration.

[4] The Plaintiff experienced substantial difficulty in effecting personal service on the Defendant since the individual who answered the door refused to accept service and returned the Statement of Claim to the agent who was attempting to serve the document.

[5] Between May 17 and May 20, 2012, an employee of the Plaintiff, THE DRIVING ALTERNATIVE, INC., telephoned KEYZ PLEEZZ in Oshawa on three separate occasions, at the telephone number provided on the Defendant's website and in each instance received a recorded greeting confirming that the caller had reached Keys Please or Keyz Pleezz. The said employee then looked up the phone number on her iPhone Search Engine and received the following information: Keyz Pleezz (289) 927-7590 located at 178 Beatty Avenue in Oshawa, ON, L1H 3B2.

[6] On May 22, 2012, the process servers were instructed to attempt again to serve the Defendant with the Statement of Claim in Oshawa, Ontario. The agent in Oshawa, Ontario attended

at the address over the weekend without success. On May 29, 2012, a further attempt to effect service was made at 178 Beatty Avenue, Oshawa, Ontario.

[7] Repeated attempts were made to serve the Statement of Claim and it was not until June 10, 2012 that the process server again attended at 178 Beatty Avenue and successfully delivered the Statement of Claim document to Mr. Picton. An affidavit of service was signed by Sheila Garnett of the Town of Courtice, in the Regional Municipality of Clarington and dated June 21, 2012.

[8] A further copy of the Statement of Claim was addressed by regular mail to Amanda Jarvis, 178 Beatty Avenue, Oshawa, ON, L1H 3B2, on June 21, 2012. On July 26, 2012, Plaintiff's counsel was advised by the Federal Court Registry that the Statement of Claim, sent by regular mail to the Defendant, had been returned to the Federal Court. The original envelope addressed to Amanda Jarvis had been opened and the phrase "NOT AT THIS ADDRESS" was hand-written adjacent to the address on the front of the envelope.

[9] As a result of the foregoing, the Plaintiff brought a Motion before this Court under Rule 147 of the *Federal Courts Rules*, SOR/98-106, requesting validation of the service which had already been effected, and Rule 136, permitting the substituted service of the Statement of Claim and other documents by registered and regular mail.

[10] By order of Mr. Justice Beaudry of this Court, it was held that the Defendant had been avoiding service, that the service previously effected was valid service pursuant to Rule 147 and that

further documents could be validly served by addressing such documents by registered and regular mail to the address given on the Defendant's Business Name Registration.

[11] The Defendant was thus validly served with the Statement of Claim when service was effected by the service of the document on an adult person at the Defendant's home and business address. As stated in the affidavit of service of Sheila Garnett dated June 21, 2012 and filed in this Court, the said valid service was effected on June 10, 2012.

[12] The Defendant has not filed or served a Statement of Defence or any other documentation and as such, is in default pursuant to the provisions of Rules 204 and 210 of the *Federal Courts Rules*.

[13] The Plaintiff, seeks and order

- (a) enjoining the Defendant, her servants, agents employees, representatives distributors, licensees and all those over whom she exercises control from using or advertising the trade-mark KEYZ PLEEZE or any other trade-mark or trade-name which is confusingly similar, either visually or phonetically, to the Plaintiff's registered trade-mark KEYS PLEASE;
- (b) condemning the Defendant to deliver up to the Plaintiff or destroy under oath any signage, labelling, documents, advertising or any other matter in the possession or control of the Defendant, the use of which would offend the injunction set out in the previous paragraph;

- (c) condemning the Defendant to pay the Plaintiff's damages in the amount of \$70,000 (CDN) plus interest thereon in excess of the prime rate, as of the date that the Defendant first commenced use of the trade-mark KEYZ PLEEZE; and
- (d) condemning the Defendant to pay the Plaintiff its costs on an enhanced basis pursuant to Column 5 including HST thereon, in view of the Defendant's avoidance of service which resulted in additional legal costs and disbursements for the Plaintiff; and to pay pre-judgment and post-judgment interest, as well as all applicable taxes on the award of damages and costs.

III. Facts

[14] The Plaintiff is the owner of the trade-mark KEYS PLEASE registered under No. TMA 570,390 in association with: "Providing professional designated driving services, namely meeting customers at predetermined locations and driving them to their destination in their own vehicles; providing taxi, limousine and chauffeur services." The Plaintiff's designated driving services under its registered trade-mark have been continuously offered in Canada since August 28, 1997 as evidenced by the certified copy of Registration No. TMA 570,390 filed.

[15] The Plaintiff has also continuously advertised its services since the inception of the company in 1997. The Plaintiff advertises its services through posters and handouts, as well as on its website. The Plaintiff also communicated with its current and potential clients through Facebook, as well as having a 1-866 telephone number (as evidenced by the Greenwood Affidavit, paras 9-14, Plaintiff's Motion Record [PMR], pages 27-28).

[16] In addition to providing designated driving services itself under the trade-mark KEYS PLEASE since 1997, the Plaintiff also licensed the trade-mark and continues to offer franchise opportunities throughout Canada. Since the inception of its services under the KEYS PLEASE mark, the Plaintiff and its licensees have had sales in excess of 15,000,000 (15 million) dollars in Canada and have expended substantial sums in advertising their services under the trade-mark (Greenwood Affidavit, paras 3-5 and 23, PMR, page 26).

[17] During the month of February 2012, the Plaintiff became aware that the Defendant had opened a business in Oshawa, Ontario, offering designated driving services to the public under the trade-mark KEYZ PLEEZZ (Greenwood Affidavit, paras 15-16, PMR, page 28).

[18] The Plaintiff began to investigate the matter and discovered that on February 3, 2012, the Defendant registered the business name, Keyz Pleezz pursuant to the *Business Names Act* of Ontario, RSO 1990, c B.17. In that document, the Defendant's activities are described as "designated driving service" (Allen Affidavit, para 3, Exhibit 1, Plaintiff's Motion Record [PMR], Tabs F and F1, pages 135, 140-142; Greenwood Affidavit, paras 16-17, PMR, Tabs D and D6, pages 28, 91-100).

[19] The Plaintiff also discovered that the Defendant was advertising its services on the internet and on Facebook under the trade-mark KEYZ PLEEZZ and had begun placing posters bearing the mark in retail outlets, restaurants, bars and entertainment outlets in the Oshawa/Durham area. It was also found that when potential customers call the Defendant's business telephone number, the

Defendant identifies her business as KEYZ PLEEZZ which is a phonetic equivalent of and is indistinguishable from the Plaintiff's registered trade-mark KEYS PLEASE. The Defendant also describes her services as alternate or designated driving services on the telephone (Greenwood Affidavit, paras 16 and 17, Exhibit 6, PMR, Tabs D, D6, pages 28, 91-100; Philips Affidavit, paras 1-10, Exhibits 1-2, PMR, Tabs C, C1 and C2, pages 12-24).

[20] The Plaintiff, on learning of the Defendant's activities, immediately instructed counsel to send out a cease and desist letter requesting that the Defendant cease infringing the Plaintiff's trade-mark. Two cease and desist letters were sent to the Defendant who declined to cease the use of the trade-mark KEYZ PLEEZZ (Greenwood Affidavit, paras 16 and 17, Exhibits 7 and 10, PMR, Tabs D, D7, D10, pages 28, 101-116, 127-128).

[21] In the face of the Defendant's refusal to cease using the offending trade-mark, the Plaintiff commenced an action on April 24, 2012. The proceeding is an Action for trade-mark infringement, passing off and depreciation of goodwill wherein the Plaintiff alleges that the Defendant has infringed and continues to infringe the Plaintiff's registered trade-mark KEYS PLEASE, as the result of the Defendant's operation of a designated driving service in association with the trade-mark and trade-name KEYZ PLEEZZ (Statement of Claim, PMR, Tab G, pages 163-178).

IV. Relevant legislation

[22] The applicable sections of the *Trade-marks Act*, RSC 1985, cT-13 [*Trade-marks Act*], are appended to this decision.

V. Analysis

Section 19 – Right to exclusive use of the Plaintiff's trade-mark

[23] “The registration of a trade-mark in respect of any wares or services, unless shown to be invalid, gives to the owner of the trade-mark the exclusive right to the use throughout Canada of the trade-mark in respect of those wares or services” (*Trade-marks Act*, s 19).

[24] Since the Plaintiff's trade-mark, as defined above, is validly registered in respect of providing wares, and professional designated driving services, namely meeting customers at predetermined locations and driving them to their destinations in their own vehicles, the Plaintiff has the exclusive right to the use, throughout Canada, of such wares and services.

Section 20 – Infringement

[25] Section 20 specifies that the right of the owner of a registered trade-mark to its exclusive use shall be deemed to be infringed by a person not entitled to the use under the *Trade-marks Act*, who sells, distributes and advertises, in this case, services in association with a confusing trade-mark and trade-name.

[26] In the present case, the evidence adduced establishes that the Defendant has not used the trade-mark exactly as registered. She has taken the Plaintiff's registered trade-mark and has made a

slight graphic amendment to change the word KEYS to KEYZ and the word PLEASE to PLEEZZ. However, from an auditory and connotational point of view, the respective marks of the parties are identical.

[27] For the purposes of, *inter-alia*, section 20 of the *Trade-marks Act*, a trade-mark or trade-name is confusing or likely to cause confusion with another trade-mark or trade-name if the use of the first mentioned trade-mark or trade-name would cause confusion with the last mentioned trade-mark or trade-name (*Trade-marks Act*, ss 6(1)).

[28] More particularly, “the use of a trade-mark causes confusion with another trade-mark if the use of both trade-marks in the same area would be likely to lead to the inference that the wares or services associated with those trade-marks are manufactured, sold, leased, hired or performed by the same [business], whether or not the wares or services are of the same general class” (*Trade-marks Act*, ss 6(2)).

[29] Additionally, with respect to passing off, subsection 7(b) of the *Trade-marks Act* prohibits a person from directing attention to his wares or services in such a way as to cause or be likely to cause confusion when that person initiates the activity in question in respect of the wares, services or business of the other.

[30] Having reviewed the evidence adduced by Plaintiff, in particular the affidavits of Phillips (paras 3-9) and Greenwood (paras 16 and 17), the Court is satisfied that the Defendant’s use of KEYZ PLEEZZ, in advertisements, posters, internet, distributed in the Oshawa/Durham market

place and in answering the phone caused confusion, and likely lead to the inference that the services offered were that of the business carried by the Plaintiff.

[31] As stated on numerous occasions by this Court to determine whether a trade-mark is confusing, that is whether concurrent use will likely lead a purchaser to believe that the associated services, in this case, come from the same source, the surrounding circumstances, particularly the five major factors as prescribed under subsection 6(5) of the *Trade-marks Act*, must be taken into account (*Haw Par Brothers International Ltd v Canada (Registrar of Trade Marks)* (1979), 48 CPR (2d) 65 (FCTD) at p 70).

[32] These five major factors to be considered by the Court in determining whether trade-marks or trade-names are confusing as prescribed under subsection 6(5) of the *Trade-marks Act*, are:

- (a) the inherent distinctiveness of the trade-marks or trade-names and the extent to which they have become known;
- (b) the length of time the trade-marks or trade-names have been in use;
- (c) the nature of the wares, services or business;
- (d) the nature of the trade; and
- (e) the degree of resemblance between the trade-marks or trade-names in appearance or sound or in the ideas suggested by them.

[33] It is evident, as the Court reviewed the evidence adduced by the Plaintiff, that the Defendant did create confusion, particularly in that the Defendant's name sounds exactly the same (see *Ortho Pharmaceutical Corp. v Mowatt & Moore Ltd et al.* (1972), 6 CPR (2d) 161).

[34] It is also important to note that in the present case, the nature of the services rendered by the Defendant is exactly the same as the Plaintiff's.

[35] Finally, the Defendant's avoidance of service and its failure to respond to the cease and desist letter from the Plaintiff, and more importantly, her deliberate advertisement in a Facebook page shows knowledge and deliberate intent to infringe and pass off.

[36] The Defendant's conduct is prohibited by subsection 7(c) of the *Trade-marks Act*.

[37] As stated in this Court's jurisprudence, the assessment of damages in the case of infringement or passing off is:

“...On the question of the measure of damages it has been held that the defendant is liable for all loss actually sustained by the plaintiff that is the natural and direct consequence of the unlawful acts of the defendant, including any loss of trade actually suffered by the plaintiff, either directly from the acts complained of or properly attributable thereto, that constitute an injury to the plaintiff's reputation, business, goodwill or trade. Speculative and unproven damages must be deleted from the calculation. The court will estimate the damages on the same basis as would a jury and damages may take into contemplation injury to the plaintiff's goodwill, for the court, acting as a jury and applying ordinary business knowledge and common sense, is entitled to consider that there cannot be deceptive trading without inflicting some measure of damage on the goodwill. Difficulty in assessing damages does not relieve the court from the duty of assessing them and doing the best it can. The court is entitled to draw inferences from the actions of the parties and the probable results that they would have. If damages cannot be estimated with exactitude, the best reasonable estimate must be made.” (*Ragdoll Productions (UK) Ltd v Jane Doe* (2002), 21 CPR (4th) 213 (FCTD) at para 40)

[38] In this instance, the only evidence of damages is found in the affidavit of Ginger Greenwood at para 26, where she states:

“The alternative driving service business is a highly competitive business and the presence of the Defendant’s business in the marketplace limits [the Plaintiff’s] ability to franchise in Oshawa-Durham and in neighbouring communities. Were [the Plaintiff] to franchise [its trade-mark in that] area, in view of the population of Oshawa, the costs for purchasing a franchise would be in the amount of \$32,000 [CDN], with annual royalties of \$38,000 [CDN] based on minimum sales of \$5,000 per week. As a result of the Defendant’s activities, [the Plaintiff’s] company is thus being deprived of that business opportunity” (Greenwood Affidavit, para 26, PMR, Tab D, page 30).

[39] The Plaintiff has not adduced any evidence to establish clearly that a franchise in Ontario, and more specifically in the Oshawa/Durham area, would generate average sales of \$5,000 per week.

[40] The Plaintiff has been in operation for 15 years, starting in 1997. Over that period, it has generated sales revenues in excess of 15 million dollars. Thus, it averages revenues of 1 million dollars per year for the services it offers directly or through franchisees in Alberta, British Columbia, Manitoba and Ontario. The revenues generated by each franchisee are not specified.

[41] This Court therefore evaluates the damages suffered by the Plaintiff at \$50,000 and not \$70,000 as claimed, because of the lack of evidence that a franchise in the Oshawa/Durham area would necessarily generate weekly revenues of \$5,000, more so in view of the fact that there are already two competitors operating in that area (see Greenwood Affidavit, para 16). This amount of \$50,000 also includes damages to the goodwill of Plaintiff.

[42] The Plaintiff also seeks costs on an enhanced basis pursuant to Column 5, including HST thereon. The Court does not find that the avoidance of service by the Defendant warrants the imposition of such a measure as the complexity of the case was not increased from said actions.

ORDER

THIS COURT ORDERS that

1. The Defendant is hereby enjoined by herself, her servants, agents employees, representatives distributors, licensees and all those over whom she exercises control from using or advertising the trade-mark KEYZ PLEEZZ or any other trade-mark or trade-name which is confusingly similar, either visually or phonetically, to the Plaintiff's registered trade-mark KEYS PLEASE.
2. The Defendant shall deliver up to the Plaintiff or destroy under oath any signage, labelling, documents, advertising or any other matter in the possession or control of the Defendant, the use of which would offend the injunction set out in the preceding paragraph.
3. The Defendant shall pay the Plaintiff's damages in the amount of \$50,000 (CDN) plus interest, as of the date that the Defendant first commenced use of the trade-mark KEYZ PLEEZZ.
4. The Defendant shall pay the Plaintiff its costs, including HST thereon, and interest, as well as all applicable taxes on the award of damages and costs, as set out in this Order.

"Andre F.J. Scott"

Judge

ANNEX

Subsections 6(1), 6(2), 6(5) and sections 7, 19, 20 and 22 of the *Trade-marks Act*, RSC 1985, cT-13, provide as follows:

6. (1) For the purposes of this Act, a trade-mark or trade-name is confusing with another trade-mark or trade-name if the use of the first mentioned trade-mark or trade-name would cause confusion with the last mentioned trade-mark or trade-name in the manner and circumstances described in this section.

(2) The use of a trade-mark causes confusion with another trade-mark if the use of both trade-marks in the same area would be likely to lead to the inference that the wares or services associated with those trade-marks are manufactured, sold, leased, hired or performed by the same person, whether or not the wares or services are of the same general class.

(5) In determining whether trade-marks or trade-names are confusing, the court or the Registrar, as the case may be, shall have regard to all the surrounding circumstances including

(a) the inherent distinctiveness of the trade-marks or trade-names and the extent to which they have become known;

(b) the length of time the trade-marks or trade-names have been in use;

6. (1) Pour l'application de la présente loi, une marque de commerce ou un nom commercial crée de la confusion avec une autre marque de commerce ou un autre nom commercial si l'emploi de la marque de commerce ou du nom commercial en premier lieu mentionnés cause de la confusion avec la marque de commerce ou le nom commercial en dernier lieu mentionnés, de la manière et dans les circonstances décrites au présent article.

(2) L'emploi d'une marque de commerce crée de la confusion avec une autre marque de commerce lorsque l'emploi des deux marques de commerce dans la même région serait susceptible de faire conclure que les marchandises liées à ces marques de commerce sont fabriquées, vendues, données à bail ou louées, ou que les services liés à ces marques sont loués ou exécutés, par la même personne, que ces marchandises ou ces services soient ou non de la même catégorie générale.

(5) En décidant si des marques de commerce ou des noms commerciaux créent de la confusion, le tribunal ou le registraire, selon le cas, tient compte de toutes les circonstances de l'espèce, y compris :

a) le caractère distinctif inhérent des marques de commerce ou noms commerciaux, et la mesure dans laquelle ils sont devenus connus;

b) la période pendant laquelle les marques de commerce ou noms

(c) the nature of the wares, services or business;

(d) the nature of the trade; and

(e) the degree of resemblance between the trade-marks or trade-names in appearance or sound or in the ideas suggested by them.

7. No person shall

(a) make a false or misleading statement tending to discredit the business, wares or services of a competitor;

(b) direct public attention to his wares, services or business in such a way as to cause or be likely to cause confusion in Canada, at the time he commenced so to direct attention to them, between his wares, services or business and the wares, services or business of another;

(c) pass off other wares or services as and for those ordered or requested;

(d) make use, in association with wares or services, of any description that is false in a material respect and likely to mislead the public as to

(i) the character, quality, quantity or composition,

(ii) the geographical origin, or

(iii) the mode of the manufacture,

commerciaux ont été en usage;

c) le genre de marchandises, services ou entreprises;

d) la nature du commerce;

e) le degré de ressemblance entre les marques de commerce ou les noms commerciaux dans la présentation ou le son, ou dans les idées qu'ils suggèrent.

7. Nul ne peut :

a) faire une déclaration fautive ou trompeuse tendant à discréditer l'entreprise, les marchandises ou les services d'un concurrent;

b) appeler l'attention du public sur ses marchandises, ses services ou son entreprise de manière à causer ou à vraisemblablement causer de la confusion au Canada, lorsqu'il a commencé à y appeler ainsi l'attention, entre ses marchandises, ses services ou son entreprise et ceux d'un autre;

c) faire passer d'autres marchandises ou services pour ceux qui sont commandés ou demandés;

d) utiliser, en liaison avec des marchandises ou services, une désignation qui est fautive sous un rapport essentiel et de nature à tromper le public en ce qui regarde :

(i) soit leurs caractéristiques, leur qualité, quantité ou composition,

(ii) soit leur origine géographique,

(iii) soit leur mode de

production or performance

fabrication, de production ou d'exécution;

of the wares or services; or

(e) do any other act or adopt any other business practice contrary to honest industrial or commercial usage in Canada.

e) faire un autre acte ou adopter une autre méthode d'affaires contraire aux honnêtes usages industriels ou commerciaux ayant cours au Canada.

Rights conferred by registration

19. Subject to sections 21, 32 and 67, the registration of a trade-mark in respect of any wares or services, unless shown to be invalid, gives to the owner of the trade-mark the exclusive right to the use throughout Canada of the trade-mark in respect of those wares or services.

20. (1) The right of the owner of a registered trade-mark to its exclusive use shall be deemed to be infringed by a person not entitled to its use under this Act who sells, distributes or advertises wares or services in association with a confusing trade-mark or trade-name, but no registration of a trade-mark prevents a person from making

(a) any bona fide use of his personal name as a trade-name, or

(b) any bona fide use, other than as a trade-mark,

(i) of the geographical name of his place of business, or

(ii) of any accurate description of the character or quality of his wares or services,

Droits conférés par l'enregistrement

19. Sous réserve des articles 21, 32 et 67, l'enregistrement d'une marque de commerce à l'égard de marchandises ou services, /sauf si son invalidité est démontrée, donne au propriétaire le droit exclusif à l'emploi de celle-ci, dans tout le Canada, en ce qui concerne ces marchandises ou services.

20. (1) Le droit du propriétaire d'une marque de commerce déposée à l'emploi exclusif de cette dernière est réputé être violé par une personne non admise à l'employer selon la présente loi et qui vend, distribue ou annonce des marchandises ou services en liaison avec une marque de commerce ou un nom commercial créant de la confusion. Toutefois, aucun enregistrement d'une marque de commerce ne peut empêcher une personne :

a) d'utiliser de bonne foi son nom personnel comme nom commercial;

b) d'employer de bonne foi, autrement qu'à titre de marque de commerce :

(i) soit le nom géographique de son siège d'affaires,

(ii) soit toute description exacte du genre ou de la qualité de ses marchandises ou services,

in such a manner as is not likely to have the effect of depreciating the value of the goodwill attaching to the trade-mark.

Exception

(2) No registration of a trade-mark prevents a person from making any use of any of the indications mentioned in subsection 11.18(3) in association with a wine or any of the indications mentioned in subsection 11.18(4) in association with a spirit.

22. (1) No person shall use a trade-mark registered by another person in a manner that is likely to have the effect of depreciating the value of the goodwill attaching thereto.

Action in respect thereof

(2) In any action in respect of a use of a trade-mark contrary to subsection (1), the court may decline to order the recovery of damages or profits and may permit the defendant to continue to sell wares marked with the trade-mark that were in his possession or under his control at the time notice was given to him that the owner of the registered trade-mark complained of the use of the trade-mark.

d'une manière non susceptible d'entraîner la diminution de la valeur de l'achalandage attaché à la marque de commerce.

Exception

(2) L'enregistrement d'une marque de commerce n'a pas pour effet d'empêcher une personne d'utiliser les indications mentionnées au paragraphe 11.18(3) en liaison avec un vin ou les indications mentionnées au paragraphe 11.18(4) en liaison avec un spiritueux.

22. (1) Nul ne peut employer une marque de commerce déposée par une autre personne d'une manière susceptible d'entraîner la diminution de la valeur de l'achalandage attaché à cette marque de commerce.

Action à cet égard

(2) Dans toute action concernant un emploi contraire au paragraphe (1), le tribunal peut refuser d'ordonner le recouvrement de dommages-intérêts ou de profits, et permettre au défendeur de continuer à vendre toutes marchandises revêtues de cette marque de commerce qui étaient en sa possession ou sous son contrôle lorsque avis lui a été donné que le propriétaire de la marque de commerce déposée se plaignait de cet emploi.

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-833-12

STYLE OF CAUSE: THE DRIVING ALTERNATIVE INC.
v
AMANDA JARVIS dba KEYZ PLEEZZ

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

**REASONS FOR ORDER
AND ORDER:** SCOTT J.

DATED: December 5, 2012

WRITTEN REPRESENTATIONS BY:

John S. Macera

FOR THE PLAINTIFF

SOLICITORS OF RECORD:

MACERA & JARZYNA, LLP
Ottawa, Ontario

FOR THE PLAINTIFF

Amanda Jarvis
Oshawa, Ontario

FOR THE DEFENDANT
(ON HER OWN BEHALF)