

FEDERAL COURT

BETWEEN:

CARYMA SA'D

Plaintiff

- and -

MORGAN YEW, CANADIAN ANTI-HATE NETWORK, AND JOHN OR JANE DOE

Defendants

NOTICE OF MOTION

(Motion to Strike Statement of Claim)

TAKE NOTICE THAT the Canadian Anti-Hate Network (“CAHN”) and Morgan Yew (collectively, the “Defendants”) will make motion to the Federal Court under rule 369(1) of the *Federal Courts Rules* (SOR/98-106).

THIS MOTION IS FOR:

1. Leave to bring this motion in writing under Rule 369;
2. An Order striking Caryma Sa'd's (the “Plaintiff”) Statement of Claim dated July 12, 2023 (the “Statement of Claim”), in its entirety, without leave to amend, pursuant to Rule 221(1)(a), (c) and (f) of the *Federal Courts Rules*;
3. An Order prohibiting the Plaintiff from re-filing the Statement of Claim against the Defendants, or in the alternative, requiring that the Plaintiff comply with any and all cost orders made in respect of this action before re-filing the Statement of Claim against the Defendants;
4. In the alternative, an Order extending the period of time within which the Defendants must file their Statement of Defence and Counterclaim, if any, to thirty (30) days from the disposition of this motion;
5. Costs of this motion awarded at the highest allowable basis; and
6. Such further and other relief as this Honourable Court deems just.

THE GROUND FOR THE MOTION ARE:

1. The Plaintiff has commenced this action against the Defendants seeking declaratory relief, damages and injunctions pursuant to subsections 7(a) and 7(d) of the *Trademarks Act* RSC, 1985, c. T-13 and sections 36 and 52 of the *Competition Act*. RSC, 1985, C. C-34.
2. The Statement of Claim relates almost entirely to the Plaintiff's cancelled public speaking event, and the opinion-based article written and/or published by the Defendants. This proceeding is a vexatious attempt to rob the Defendants' of their right to freedom of expression under the guise of erroneous and baseless allegations of wrongdoing under the *Trademarks Act* and the *Competition Act*.
3. The facts pleaded in the Statement of Claim is made up of speculative assumptions, sweeping conclusions, bald allegations and argument centered on discrediting the reputation of the Defendants, with no material allegations of fact that support the asserted conclusions. Without the requisite material facts, the Statement of Claim must be struck.
4. The Statement of Claim is plainly deficient on its face as it:
 - a. discloses no reasonable cause of action (Rule 221(1)(a));
 - b. is scandalous, frivolous and vexatious (Rule 221(1)(c)); and
 - c. is otherwise an abuse of the process of the Court (Rule 221(1)(f)).
5. It is plain and obvious that the Statement of Claim discloses no reasonable cause of action. The Statement of Claim is devoid of the material facts necessary to establish any wrongdoing under subsections 7(a) and 7(d) of the *Trademarks Act*, and sections 36 and 52 of the *Competition Act*. Critically absent from the Statement of Claim are non-speculative material facts required to establish:
 - a. That the alleged false and misleading statement(s) tended to discredit the business or goods or services of the Plaintiff (7(a) *Trademarks Act*; 52 *Competition Act*);
 - b. That the Plaintiff is a competitor of CAHN (7(a) *Trademarks Act*; 52 *Competition Act*);

- c. That the alleged false and misleading statement(s) resulted in damage to the Plaintiff causally linked to such statements (7(a) *Trademarks Act*; 52 *Competition Act*);
 - d. That the description ANTI-HATE is used by CAHN in association with services (7(d) *Trademarks Act*);
 - e. That the description ANTI-HATE is used in connection with intellectual property (7(d) *Trademarks Act*);
 - f. That the description ANTI-HATE is false in a material respect (7(d) *Trademarks Act*);
 - g. That the description ANTI-HATE is likely to mislead the public as to the (i) character, quality, quantity or composition, (ii) the geographical origin, or (iii) the mode of the manufacture, production or performance of CAHN's services (7(d) *Trademarks Act*);
 - h. That the alleged false description ANTI-HATE resulted in damage to the Plaintiff causally linked to such description (7(d) *Trademarks Act*);
 - i. That the impression of the relevant consumer would be that the impugned statements are false or misleading (7(a) *Trademarks Act*; 52 *Competition Act*);
 - j. That the Defendants were promoting a business interest in using the alleged false and misleading representations (52 *Competition Act*); and
 - k. That the Defendants knowingly or recklessly made a representation to the public that is false or misleading in a material respect (7(a) *Trademarks Act*; 52 *Competition Act*).
6. In addition to being devoid of any reasonable cause of action, the Statement of Claim is equally scandalous, frivolous, vexatious and otherwise an abuse of process as a result of the failure to meet the minimum level of factual disclosure mandated by the *Federal Courts Rules* and applicable jurisprudence.
 7. There is no amendment that the Plaintiff can make to cure the deficiencies of the Statement of Claim and a statement of defence cannot be drafted in response.
 8. This motion can be fairly heard and determined by the Court in writing pursuant to Rule 369 of the *Federal Courts Rules*.

THE FOLLOWING DOCUMENTARY EVIDENCE are relied upon:

9. The Statement of Claim;
10. The Affidavit of Karhema Etienne, dated August 25, 2023; and
11. Such further and other material as counsel may advise and this Honourable Court may permit.

DATED AT Ottawa, Ontario, this 28th day of August, 2023.



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