

Exhibit P

6

Court File No. T-161-05

FEDERAL COURT

BETWEEN:

FOAM CREATIONS INC.

-and-

HOLEY SOLES HOLDINGS LTD.

FEDERAL COURT
COUR FÉDÉRALE
Copy of Document
Copie du document
Filed / Déposé
Received / Reçu

Date MAR 10 2005
Registrar SEAN CARR
Greffier Registry Officer,
Agent du greffe,
Defendant

STATEMENT OF DEFENCE

1. This Statement of Defence is in reply to the Statement of Claim dated January 28, 2005 (the "Statement of Claim").
2. Except where expressly admitted herein, the Defendant denies each and every allegation in the Statement of Claim and puts the Plaintiff to the strict proof thereof.
3. The Defendant has no knowledge of the allegations in paragraphs 2, 5, 8, 9 and 13 of the Statement of Claim and puts the Plaintiff to the strict proof thereof.
4. The Defendant denies the allegations in paragraphs 1, 3, 6, 7, 10, 11, 12, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26 and 27 of the Statement of Claim and puts the Plaintiff to the strict proof thereof.
5. For the reasons set out herein, the Defendant denies that the Plaintiff is entitled to the relief claimed in paragraph 1 of the Statement of Claim.
6. In further reply to paragraph 3 of the Statement of Claim, the Defendant states that it is a federally incorporated company which was incorporated on or about March 3, 2003 and

which is extra-provincially registered in British Columbia. The Defendant has a registered office of P.O. Box 10424, Pacific Centre, 1300 777 Dunsmuir Street, Vancouver, British Columbia, Canada, V7Y 1K2.

7. With respect to paragraph 4 of the Statement of Claim, the Defendant states that a company named Finproject N.A. Inc. ("Finproject") has in the past manufactured foam shoes, some of which were marked with REBOUND. The Defendant has no knowledge of the remaining allegations in paragraph 4 of the Statement of Claim and puts the Plaintiff to the strict proof thereof.
8. In further reply to the allegations in paragraph 6 of the Statement of Claim, the Defendant denies that any of the features identified in paragraph 6 of the Statement of Claim as the "Foam's Designs" are unique, original or proprietary to the Plaintiff. The Defendant states that said features are functional and thus do not distinguish, and are not capable of distinguishing, the Plaintiff's shoes from those of others. Further, the website of the Plaintiff's alleged distributor Crocs LLP, at <http://www.crocs.com/anatomy.asp>, admits the functionality of at least some of the features identified as the Foam's Designs.
9. Further, or in the alternative, numerous third parties sell or have sold shoes in Canada bearing one or more of the features identified in paragraph 6 of the Statement of Claim as the "Foam's Designs". Such parties are identified in Schedule "A" to this Statement of Defence. As a result of the common and widespread use by such other parties, the said features do not distinguish, and are not capable of distinguishing, the Plaintiff's shoes from those of others.
10. Further, or in the alternative, the parties identified in Schedule "A" hereto sell or have sold such shoes in association with the trademarks identified in Schedule "A" hereto, and the use of trademarks in association with such shoes precludes any possibility of confusion arising as to the source of such shoes since consumers distinguish such shoes by trademark rather

than by the get-up of the shoes.

11. In further reply to paragraph 7 of the Statement of Claim, the Defendant denies that any of the features identified in the Statement of Claim as the Foam's Designs are original or artistic works or that copyright subsists in any of said features. The Defendant also denies the remaining allegations in paragraph 7 of the Statement of Claim and puts the Plaintiff to the strict proof thereof.
12. In further reply to paragraph 10 of the Statement of Claim, the Defendant denies that any copyright subsists in the "Foam's Initial Shoe" or any of the Plaintiff's shoes, the features identified in the Statement of Claim as the Foam's Designs, any moulds allegedly used to make such shoes, or any portion of any of the foregoing. The Defendant denies that the Plaintiff has any exclusive right of reproduction as alleged in the last sentence of paragraph 10 of the Statement of Claim. The Defendant has no knowledge of any alleged written agreement between the Plaintiff and L'Artigiani Stampi di Battistion Ettore e C. S.n.C., but denies that any such agreement could or did validly transfer to the Plaintiff any right, title or interest in or to "Foam's Initial Shoe" or any of the Plaintiff's shoes, the features identified in the Statement of Claim as the Foam's Designs, any moulds allegedly used to make such shoes, or any portion of any of the foregoing, and puts the Plaintiff to the strict proof thereof.
13. Further, or in the alternative, in the event that copyright subsists in any of the features identified in the Statement of Claim as the Foam's Designs or any of the Plaintiff's shoes, which is not admitted but denied, the Plaintiff's shoes have been reproduced in a quantity of more than fifty and consequently the Defendant cannot have infringed any such copyright(s). The Defendant pleads and relies on Section 64 of the *Copyright Act*. The Defendant also pleads and relies on Section 64.1 of the *Copyright Act*.
14. In further reply to paragraphs 17 and 18 of the Statement of Claim, the Defendant states that

Anne Rosenberg was involved with the incorporation of the Defendant, and that prior to the incorporation of the Defendant Ms. Rosenberg purchased foam shoes from Finproject for her sale and distribution. The Defendant also states that it purchased foam shoes from Finproject from time to time following the Defendant's incorporation for the Defendant's sale and distribution.

15. In further reply to paragraph 19 of the Statement of Claim, the Defendant denies that it has failed to pay for any shoes purchased from Finproject. The Defendant delivered cheques to Finproject for full and complete payment of the Defendant's account with Finproject on or about June 25, 2004.
16. The Defendant states that it was an explicit or implied term of the purchase by it and Ms. Rosenberg of shoes from Finnproject that the Defendant and Ms. Rosenberg were entitled to advertise, offer for sale, sell and distribute such shoes, and that the Plaintiff and Finproject have thus exhausted all of their/its rights in all shoes purchased by the Defendant and Ms. Rosenberg from Finproject and the Defendant is thus not liable for the advertisement, offer for sale, distribution or sale of any of said shoes.
17. Further, the Plaintiff and Finproject have permitted its/their distributors to advertise, offer for sale, sell and distribute shoes purchased from the Plaintiff and Finproject in association with the distributors' trademarks. It was an express or implied term in the distributors' agreements with the Plaintiff and Finproject that such distributors were entitled to advertise, offer for sale, sell and distribute shoes purchased from the Plaintiff and Finproject in association with the distributors' trademarks. The Defendant states that it was an express or implied term of its purchase of shoes from Finnproject that the Defendant was entitled to advertise, offer for sale, sell and distribute such shoes in association with the Defendant's trademarks, including HOLEY SOLES, and that the Plaintiff and Finproject have permitted such activities.

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.