

Federal Court



Cour fédérale

Date: 20251222

Docket: T-1379-24

Citation: 2025 FC 2017

Toronto, Ontario, December 22, 2025

PRESENT: The Honourable Madam Justice Furlanetto

BETWEEN:

SHOICHI MATSUMOTO AND SHEN CHEN

Plaintiffs

and

CANUCK EATS INC.

Defendant

JUDGMENT AND REASONS

[1] This is a motion brought by content creators and professional photographers, Shoichi Matsumoto [Matsumoto] and Shen Chen [Chen], for default judgment against the Defendant, Canuck Eats Inc [Canuck Eats], pursuant to Rule 210 and Rule 369 of the *Federal Courts Rules*, SOR/98-106 [Rules].

[2] Rule 210 of the *Rules* provides that a plaintiff may bring an *ex parte* motion for judgment against a defendant who is in default of filing a statement of defence. To obtain judgment, a

plaintiff must first establish that the defendant was served with a statement of claim and has not filed a statement of defence within the deadline specified in Rule 204 of the *Rules*; and second, the evidence must enable the Court to find on a balance of probabilities that the plaintiff has established its claim: *Bell Canada v L3D Distributing Inc (INL3D)*, 2021 FC 832 at paras 41-43; *Trimble Solutions Corporation v Quantum Dynamics Inc*, 2021 FC 63 at para 35; *Teavana Corp v Teayama Inc*, 2014 FC 372 at para 4.

[3] The Plaintiffs claim copyright in the 13 photographs shown in Schedule A [Works]. The underlying action relates to allegations of copyright and moral rights infringement from alleged unauthorized reproduction of the Works on the food delivery service website www.canuckeats.com [Canuck Eats Website].

[4] This is the second motion for default judgment brought by the Plaintiffs. In the order from the first motion, I found the evidence established that the Defendant was in default but there was insufficient evidence to grant judgment.

[5] As set out below, there continues to be issues with the evidence provided as it relates to the standing of Chen to seek judgment. As such, the judgment requested can only be granted in part.

I. Background

[6] The Plaintiffs are content creators and professional photographers. Their content includes images of food that are displayed on their websites and various social media platforms.

[7] Matsumoto is a content creator and photographer for the blog, *No Recipes*, located at <http://norecipes.com> [Matsumoto Blog] where images 1 and 2 from Schedule A are featured.

[8] Chen is a content creator and photographer for the blog, *Just One Cookbook*, located at www.justonecookbook.com [JOC Blog] where images 3 to 13 from Schedule A are featured.

[9] In and around January 2024, Matsumoto and Chen discovered unauthorized use of the Works on the Canuck Eats Website.

[10] On February 15, 2024, the Plaintiffs sent a demand letter to Canuck Eats in respect of the alleged infringement. However, no response was received. On June 6, 2024, the present action was commenced.

II. **Ownership of the Copyright in the Works**

[11] Pursuant to subsection 13(1) of the *Copyright Act*, RSC 1985, c C-42 [Act], the author of a work is the first owner of the copyright to the work.

[12] If copyright has not been registered, the presumptions respecting copyright and ownership under subsection 34.1(1) of the Act apply, such that copyright is presumed to subsist in the work and the author is presumed to be the owner of the copyright, unless the contrary is proven.

[13] The supplementary affidavit evidence from Chen states that he photographed and uploaded the images identified as images 3 to 13 in Schedule A to the JOC Blog and includes links to the images as posted. The affidavit links pages of the JOC Blog, including an “About” page that introduces Chen as the co-founder, photographer, and person responsible for all business operations on the JOC Blog. It also links to a “Permissions” page which states that Just One Cookbook [JOC] owns the copyright to all photographs on the site. The evidence shows that the bottom of each page of the JOC Blog includes a statement “© 2025 Just One Cookbook. All rights reserved.”

[14] In his first affidavit, Chen states that he owns the “copyright and all affiliated rights in his photographs by virtue of having created them and never having sold, waived, or assigned any rights to them, except for any licences referred to in [his] affidavit”. However, this is inconsistent with the information given to the public on the JOC Blog, which is cited by the Plaintiffs in their written representations on the motion, stating that JOC, not Chen, owns the copyright in all photographs on the site, which would include images 3 to 13 of Schedule A.

[15] The supplementary evidence raises the issue of whether Chen has standing to bring a claim for copyright infringement relating to images 3 to 13 if he does not own the copyright in these photographs.

[16] As recently stated by Associate Judge Cotter in *McQuaig v Enbridge Gas Inc*, 2025 FC 1439 at paragraph 17, “An essential element of a claim for copyright infringement is standing. Standing flows from being either the owner of the copyright in question, or ‘deriving any right,

title or interest by assignment or grant in writing from the owner’ (see section 41.23 of the *Copyright Act*, RSC 1985, c C-42)’’.

[17] The invoices attached to the first Chen affidavit include letterhead from JOC Incorporated, with an address in Belmont, California. This suggests that JOC is an incorporated company that has at least some form of operations in California. However, there is no information provided about the corporate structure of JOC to conclude that Chen would have authority to bring the present action on its behalf. Indeed, while the JOC website indicates that Chen is its Chief Operating Officer and co-founder of JOC, it is unclear what authority he has, if any, to assert copyright in his personal capacity, particularly as there is no evidence of any subsequent assignment of copyright back to Chen from JOC, or any other agreement or grant in writing relating to the copyright.

[18] In view of the outstanding issues as to the standing of Chen, I am unable to grant judgment for copyright infringement relating to images 3 to 13 of Schedule A.

[19] With respect to Matsumoto, the supplementary affidavit states that he photographed and uploaded the images identified as images 1 and 2 of Schedule A to the Matsumoto Blog and includes links to the images. The Matsumoto Blog includes a “Photography” page where Matsumoto claims copyright in the photographs included on the site and details regarding his offer to license the use of his photographs for commercial purposes. The bottom of each page of the Matsumoto Blog includes a statement “Copyright © 2024 Marc Matsumoto. All rights reserved.”

[20] Based on the evidence from Matsumoto, I am satisfied he is both the author and the owner of the copyright in images 1 and 2 of Schedule A. I will therefore restrict my analysis relating to copyright infringement to images 1 and 2 and will only consider Chen's claims as they relate to moral rights.

III. **Copyright Infringement**

[21] Subsection 27(1) of the Act describes what is known as "primary infringement" (*Euro-Excellence Inc v Kraft Canada Inc*, 2007 SCC 37 at para 17) or "direct infringement" of copyright. Primary infringement occurs when any person, without consent of the copyright owner, does anything that only the copyright owner has the right to do under the Act.

Subsection 3(1) of the Act sets out the rights that a copyright owner possesses under the Act, which includes the right to produce or reproduce, perform, or publish the work. It also grants the sole right to authorize any such acts.

[22] The Plaintiffs assert that Canuck Eats infringed copyright under the Act through reproduction of the Works on the Canuck Eats Website. The Matsumoto and Chen affidavits provide screenshots of the alleged infringing images. Matsumoto's images (images 1 and 2 of Schedule A) are shown in screenshots date stamped January 7 and 11, 2024 in connection with two Oshawa restaurants, Azian Cuisine and Tokushima Sushi. I am satisfied from the evidence that the screenshots show unauthorized reproductions of images 1 and 2 of Schedule A.

[23] The Affidavit of Service provides two British Columbia addresses for the Defendant in an attached BC corporate profile report, one in Merritt, BC and the other in Burnaby, BC, and two

addresses from a Google business profile, one in Nanaimo, BC and the other in Oshawa, ON. The Merritt, BC address matches the address retrieved from a Google search for the company, which lists the Canuck Eats Website as a “Menu” link. Merritt BC also appears as a tab on the screenshot of the Canuck Eats Website, along with the other locations identified through the Plaintiff’s corporate searches. This evidence is sufficient to establish a connection between the Defendant and the Canuck Eats Website and to support the *situs* of the content provider as located in Canada. Thus, the evidence establishes the Defendant has infringed copyright in images 1 and 2 of Schedule A in Canada.

IV. **Moral Rights**

[24] Pursuant to subsection 14.1(1) of the Act, “The author of a work has, subject to section 28.2, the right to the integrity of the work and, in connection with an act mentioned in section 3, the right, where reasonable in the circumstances, to be associated with the work as its author by name or under a pseudonym and the right to remain anonymous.”

[25] While the right to association is infringed where a work is attributed to someone else (see for example, *Jacobs v Canada (Attorney General)*, 2009 FC 628 at para 9; *Collett v. Northland Art Company Canada Inc.* 2018 FC 269 [*Collett*] at paras 39-40), in this case none of the images have been attributed to another individual or entity. Rather, some of the JOC watermarks can still be seen on the images posted on the Canuck Eats Website. While the reproductions made are unauthorized, I do not agree that the right to association under subsection 14.1(1) has been infringed.

[26] Subsection 28.2(1) of the Act provides that an author's right to the integrity of a work is infringed only if the work is, to the prejudice of the author's honour or reputation, (a) distorted, mutilated or otherwise modified; or (b) used in association with a product, service, cause or institution.

[27] Thus, for there to be an infringement of the right to integrity, a plaintiff must show that there has been prejudice to their honour or reputation. This requires both subjective and objective elements. While the author of a work may provide evidence to establish subjectively how their honour or reputation has been affected, there must also be objective evidence of the prejudice alleged: *Young v Thakur*, 2019 FC 835 at para 34, citing to *Collett* at para 22, among other cases.

[28] Based on the screenshots, it can be concluded that the Works were used on the Canuck Eats Website in association with a service (paragraph 28.2(1)(b) of the Act). The Plaintiffs' affidavits provide some subjective evidence on how their honour or reputation may be affected by these reproductions, but they have not adduced any objective evidence of prejudice. The first Matsumoto Affidavit states, "Unauthorized use of my photographs suggests an association that I have not approved, potentially damaging my professional reputation." It also states, "This loss of control can harm my artistic reputation, particularly if the photographs are used in ways that conflict with my brand values or aesthetic standards." These are all subjective statements.

[29] Similarly, Chen's first affidavit refers to a loss of exclusivity and unauthorized use that diminishes uniqueness; devaluation of Chen's work, missed business opportunities and loss of control. Again, these assertions are all subjective assessments.

[30] The evidence provided is insufficient to establish infringement under paragraph 28.2(1)(b) of the Act.

[31] With respect to paragraph 28.2(1)(a), the Plaintiffs assert the Defendant infringed their moral rights by cropping, resizing, and altering the Works. However, when visually comparing the screenshots provided to the photographs on the Matsumoto Blog and the JOC Blog, any cropping or resizing appears minimal. While the quality of the images in the screenshots is not as sharp and clear as the original images, the graphics on the whole website have the same look. In addition to the points already noted on lack of objective evidence, I cannot conclude that distortion or mutilation of the images occurred.

V. **Remedies**

[32] Matsumoto requests a permanent injunction, which flows from my finding of copyright infringement and will be awarded. In addition, he claims general damages or in the alternative, statutory damages, and punitive damages.

[33] A plaintiff has the option to elect statutory damages *in lieu* of general damages at any time before final judgment (subsection 38.1(1) of the Act). The Plaintiffs do not elect statutory damages. Instead, they claim statutory damages as an alternative remedy. The damage claims made by Matsumoto are not comparable (the claim for general damages is \$6,000 per photograph, while the claim for statutory damages is \$15,000 per photograph). As there has been no election of statutory damages, and I do not find the scheme in this context to be of any greater assistance, I will restrict my findings to the claim for general damages.

A. *Damages*

[34] Where damages under subsection 35(1) of the Act may be difficult to prove, they may be assessed based on a licence fee that otherwise would have been charged: *Stross v. Trend Hunter Inc*, 2020 FC 201 at para 69, aff'd 2021 FC 955, citing to *Hager v ECW Press Ltd (TD)*, 1998 CanLII 9115 (FC) at para 75. In this case, Matsumoto claims damages based on his licensing practices.

[35] On the Matsumoto Blog, he advertises “flexible global licenses starting at \$1,000 per photo”. He provides one invoice for a photoshoot that he asserts charged an approximate fee of \$1,620 per photograph, although this is not split out on a per photograph basis on the invoice. The invoice has not been translated and is not in Canadian or US dollars. He provides a second invoice which charged \$4,625 USD for a photoshoot, instead of a per photograph charge. He asserts that this would be “approximately \$6,680 at the time of swearing [the] affidavit”. The invoice indicates that this photoshoot involved 15 photographs.

[36] In his affidavit, Matsumoto states that he does not typically licence photographs in the manner used by Canuck Eats. He states that any licence would have been negotiated based on his standard licensing terms and that because his standard practice is to charge per photoshoot, rather than per photograph, licensing the photographs used by Canuck Eats would have resulted in a higher licensing fee. As his licences are global, for use across all media and platforms and are provided in perpetuity, he states that the fee would have been close to \$6,000 per photograph.

[37] It is unclear what currency is claimed, but as this is a Canadian proceeding, I have inferred that the request is in Canadian dollars.

[38] Matsumoto states that the two photographs in issue were used four times without consent. He asserts that infringement has deprived him of licensing revenue and has diminished the commercial value of his works. However, there is only evidence of two uses of each of the photographs and no evidence to support the other assertions.

[39] While I will not assess damages for Chen in view of the standing issue, I nonetheless note that Chen also provided evidence relating to typical licensing fees for photographs that are of a similar type to Matsumoto's photographs. Chen states that a sponsored post typically includes three to five photographs for \$5,000, with the licensing fee for each photograph at approximately \$1,000 to \$1,666. He refers to a project that included two to three photographs within a \$10,000 package that established a fee of \$3,333 to \$5,000 per photograph. Chen asserts that for the type of use made by Canuck Eats, a licence fee of \$4,500 per photograph is reasonable.

[40] Considering the nature of the evidence before me, it is my view that a damage award of \$3,000 CAD per photograph is more consistent than the \$6,000 per photograph requested. As such, I award a total damage award of \$6,000 CAD to Matsumoto for infringement of the two photographs.

B. *Punitive Damages*

[41] As set out in *Whiten v Pilot Insurance Co*, 2002 SCC 18 [*Whiten*], punitive damages are for exceptional cases where “malicious, oppressive and high-handed” misconduct represents a “marked departure from ordinary standards of decent behaviour” and offends the court’s sense of decency (at paras 36 and 94). Relevant factors include: whether the conduct was planned and deliberate; the intent and motive of the defendant; whether the defendant persisted in the outrageous conduct over a lengthy period of time; whether the defendant concealed or attempted to cover up the misconduct; the defendant’s awareness of the wrongdoing; and whether the defendant profited from the misconduct: *Louis Vuitton Malletier SA v Yang*, 2007 FC 1179 at para 47. However, punitive damages are only to be awarded if all other penalties and damages have been taken into account, and they are found to be inadequate to accomplish the objectives of retribution, deterrence, and denunciation: *Whiten* at para 123.

[42] Matsumoto asserts that the conduct was deliberate, not inadvertent, for commercial benefit and persisted over an extended period, with several infringing images still on the Defendant’s server. However, the evidence is minimal on these points. Further, the links provided in the materials no longer work and the screenshots for infringement of Matsumoto’s images only include two dates January 7, 2024 and January 11, 2024. While I agree that deterrence is important, I will award only a modest award of punitive damages (\$2,000 CAD) in view of the limited evidence before me.

[43] As Chen’s claim is dismissed, largely because of the standing issue, he shall not be awarded any costs.

[44] Matsumoto was successful on his requests on the motion and shall be awarded costs calculated on the basis of the Tariff in a total amount of \$2,513.52 as claimed in the Bill of Costs.

JUDGMENT IN T-1379-24

THIS COURT'S JUDGMENT is that:

1. The motion is granted in part.
2. The Defendant Canuck Eats Inc. and all persons and entities acting on its behalf or in conjunction with the Defendant is permanently enjoined from:

(i) unauthorized reproduction of Images 1 and 2 of Schedule A in any form; and (ii) representations attributing or appearing to attribute any authorship in and to Images 1 and 2 by the Defendant.
3. The Defendant shall pay to the Plaintiff Shoichi Matsumoto damages in the amount of \$6,000.00 CAD.
4. The Defendant shall pay to the Plaintiff Shoichi Matsumoto punitive damages in the amount of \$2,000.00 CAD.
5. The Defendant shall pay costs to the Plaintiff Shoichi Matsumoto in the amount of \$2,513.52 CAD.
6. All other requests in the motion are dismissed.

"Angela Furlanetto"

Judge

Schedule A

<p data-bbox="602 283 699 315">Image 1</p> 	<p data-bbox="1019 283 1198 342">Photographer: Matsumoto</p>
<p data-bbox="602 936 699 968">Image 2</p> 	<p data-bbox="1019 936 1198 995">Photographer: Matsumoto</p>

<p data-bbox="597 210 701 241">Image 3</p>  A bowl of stir-fried noodles, likely chow mein, topped with sliced red bell peppers, green onions, and pieces of meat. The dish is served on a white plate with a dark rim, set against a dark wooden background. A pair of black chopsticks and a small bowl of green sauce are visible in the background.	<p data-bbox="1052 210 1330 241">Photographer: Chen</p>
<p data-bbox="597 611 701 642">Image 4</p>  A bowl of soup, possibly a ramen or noodle soup, featuring a dark broth, noodles, and various toppings including green onions, yellow slices, and a dark meat patty. A pair of wooden chopsticks rests on the rim of the bowl. The background shows other bowls and a white cloth.	<p data-bbox="1052 611 1330 642">Photographer: Chen</p>
<p data-bbox="597 947 701 978">Image 5</p>  A bowl of soup, likely a seafood or vegetable soup, containing shrimp, green onions, and other ingredients. The bowl is made of light-colored wood or bamboo. A blue and white patterned spoon is visible in the background.	<p data-bbox="1052 947 1330 978">Photographer: Chen</p>
<p data-bbox="597 1304 701 1335">Image 6</p>  A plate of sushi, specifically a maki roll, featuring a white rice base, green avocado, and a filling of yellow and white ingredients. The roll is garnished with a drizzle of orange sauce and black sesame seeds. The plate is white and rectangular.	<p data-bbox="1052 1304 1330 1335">Photographer: Chen</p>

Image 7



Photographer: Chen

Image 8



Photographer: Chen

Image 9



Photographer: Chen

Image 10



Photographer: Chen

Image 11



Photographer: Chen

Image 12



Photographer: Chen

Image 13



Photographer: Chen

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-1379-24

STYLE OF CAUSE: SHOICHI MATSUMOTO AND SHEN CHEN v
CANUCK EATS INC.

JUDGMENT AND REASONS: FURLANETTO J.

DATED: DECEMBER 22, 2025

**MOTION IN WRITING CONSIDERED IN TORONTO, ONTARIO PURSUANT TO
RULES 210 AND 369 OF THE *FEDERAL COURTS RULES*.**

WRITTEN SUBMISSIONS BY:

Brian Radnoff
Juli Kim

FOR THE PLAINTIFFS

SOLICITORS OF RECORD:

Dickinson Wright LLP
Barristers and Solicitors
Toronto, Ontario

FOR THE PLAINTIFFS