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ARTICLE

## Intellectual Property Weekly Abstracts Bulletin — Week of August 14, 2017

### Copyright Decision

Default judgment for copyright infringement upheld by Court as no evidence found for out-of-court settlement  
*Benchmuel v. Gags N Giggles, 2017 FC 720*

The Defendants sought to have a default judgment set aside, but failed.

One Plaintiff owns copyright in two works that are licenced to the second Plaintiff, Canada Athletics, who manufactures a wide variety of garments with the copyrighted works displayed. These products are sold in souvenir shops, and the Defendants own two retail souvenir shops.

The Defendants had been served with an *ex parte* Order enjoining them from displaying, selling and destroying products bearing the allegedly infringing designs and for the preservation of property. The evidence showed that the Defendants did not remove the products from the shelves.

The Defendants also did not file a defence, and the Plaintiffs thus obtained a default judgment for \$40,000 in statutory damages and \$15,000 for punitive damages.

The Defendants argued that they thought that they had settled the matter out-of-court, after speaking with the brother of one of the Plaintiffs at a trade show. However, no written settlement offer was ever put into evidence and the Plaintiffs denied settling the matter.

The Court was not convinced by the evidence of the Defendants' impression that a settlement had been reached, and therefore did not find a reasonable explanation for the failure to file a defence. The Court held that their actions amounted to willful blindness and a serious disregard for the legal process. Thus, the default judgment was upheld.

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