

SUN APR 27 / 14

Court File No. T - 939 - 14

FEDERAL COURT

**DECOMMODIFICATION LLC, BURNING MAN PROJECT and
BLACK ROCK CITY, LLC, doing business as BURNING MAN**

Plaintiffs

- and -

**BURN BC ARTS COOPERATIVE, JACKSON SMITH,
TANYA EVANS, BHAK JOLICOEUR and BRIAN CORKUM,
sometimes operating individually or collectively as BURN BC,
BURNBC.ORG and/or BURN BC ARTS COOPERATIVE**

Defendants

STATEMENT OF CLAIM

TO THE DEFENDANTS:

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiffs. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or a solicitor acting for you are required to prepare a statement of defence in Form 171B prescribed by the *Federal Courts Rules*, serve it on the plaintiffs' solicitor or, where the plaintiffs do not have a solicitor, serve it on the plaintiffs, and file it, with proof of service, at a local office of this Court, **WITHIN 30 DAYS** after this statement of claim is served on you, if you are served in Canada.

If you are served in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period of serving and filing your statement of defence is sixty days.

Copies of the *Federal Courts Rules*, information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO DEFEND THIS PROCEEDING, judgment may be given against you in your absence and without further notice to you.

Dated: April 22, 2014

ANDREW MURRAY
REGISTRY OFFICER
AGENT DU GREFFE

Issued by:

Local office: Federal Court of Canada
180 Queen Street West
Suite 200
Toronto, Ontario
M5V 3L6

TO: **Burn BC Arts Cooperative**
3137 Heather Street
Vancouver, B.C.
V5Z 3K3

AND TO: **Jackson Smith**
209 – 2908 Slocan Street
Vancouver, B.C.
V5M 4S7

AND TO: **Tanya Evans**
707 Poirier Street
Coquitlam, B.C.
V3J 6B5

AND TO: **Bhak Jolicoeur**
3137 Heather Street
Vancouver, B.C.
V5Z 3K3

AND TO: **Brian Corkum**
2951 East 25th Avenue
Vancouver, B.C.
V5R 1J1

CLAIM

D 1. The Plaintiffs claim:

- I
- (a) a declaration that the Defendants individually and collectively have directed public attention to their wares, services or business in such a way as to cause or be likely to cause confusion in Canada, at the time they commenced so to direct public attention to them, between their wares, services or business and the wares, services or business of the Plaintiffs, contrary to s. 7(b) of the *Trade-marks Act*;
 - (b) an interim, interlocutory and permanent injunction restraining the Defendants, the agents, members, staff, managers, employees, officers, directors, licensees, successors and assigns of the Defendants, and all others over whom any of the foregoing exercise control, from doing the prohibited acts described in paragraph 1(a) above, including without limitation by adopting, using or promoting the trade-marks BURNING MAN and DECOMPRESSION (the "Burning Man Trade-marks") or anything confusingly similar thereto as or as part of any trade-mark, trade name, corporate name, business name, collective name, association name,

cooperative name, domain name, social media account name or other trading style;

- (c) damages or an accounting of the Defendants' profits, as the Plaintiffs may elect prior to trial, for the Defendants' violations of the *Trade-marks Act* as described herein;
- (d) pre-judgment and post-judgment interest pursuant to the *Federal Courts Act*, R.S.C. 1985, c. F-7, as amended, compounded at an interval and a rate that the Court considers just;
- (e) costs on a substantial indemnity scale, plus H.S.T.; and
- (f) such further and other relief as this Honourable Court may deem just.

The Plaintiffs

2. The Plaintiff Decommodification LLC ("Decommodification") is a California limited liability company with an office address located at 50 Balmy Street, San Francisco, California, 94110 U.S.A.

3. The Plaintiff Burning Man Project (“BMP”) is a nonprofit California public benefit corporation with its principal office located at 660 Alabama Street, San Francisco, California 94110 U.S.A.
4. The Plaintiff Black Rock City, LLC (“BRC”) is a nonprofit Nevada limited liability company with an office address located at 660 Alabama Street, San Francisco, California, 94110 U.S.A., and is a subsidiary of BMP.
5. The Plaintiffs are the entities responsible for organizing and conducting the world famous Burning Man event, described in more detail below.
6. The Plaintiff Decommodification is the worldwide owner of all rights, titles and interests in and to the Burning Man Trade-marks, including the tremendous goodwill associated with the same in Canada.
7. The Plaintiff BMP is Decommodification’s licensee under the Burning Man Trade-marks, and the Plaintiff BRC is a sublicensee under the Burning Man Trade-marks. At all times under said license Decommodification (including any predecessors-in-title, who collectively with Decommodification shall be referred to as Decommodification) has and continues to exercise direct or indirect control over the character and quality of all goods

and services provided, performed or promoted by BMP and BRC and any other licensees in association with the Burning Man Trade-marks.

8. Collectively the Plaintiffs will be referred to as “Burning Man.”

The Defendants

9. The Defendant Burn BC Arts Cooperative (“Burn BC”) is a British Columbia Cooperative Association incorporated 27 August 2013 with a registered office address of 3137 Heather Street, Vancouver, B.C., V3J 6B5.

10. The individual Defendants Jackson Smith, Tanya Evans and Bhak Jolicoeur are registered directors of Burn BC, whose addresses are recorded in Burn BC’s corporate search reports as follows:

- (a) Jackson Smith: 209 – 2908 Slocan Street, Vancouver, B.C., V5M 4S7;

- (b) Tanya Evans: 707 Poirier Street, Coquitlam, B.C., V3J 6B5; and

- (c) Bhak Jolicoeur: 3137 Heather Street, Vancouver, B.C., V5Z 3K3.

11. The individual Defendant Brian Corkum is an individual believed to reside at 2951 East 25th Avenue, Vancouver, B.C., V5R 1J1. He is recorded in the Canadian Intellectual Property Office, along with the other Defendants, as an applicant for registration in Canada of the trade-marks BURNING MAN (Serial No. 1,599,506) and BC DECOMPRESSION (1,599,500), both of which applications claim that these marks have been used in Canada by these Defendants.
12. Mr. Corkum's exact relationship to the other Defendants is not known to the Plaintiffs but is known to the Defendants.
13. Individually or collectively, these Defendants also operate as Burn BC including from the website *burnbc.org*.
14. As described in more detail below, the Defendants have (without authorization but with full knowledge of the Plaintiffs and their rights, titles and interests in and to the Burning Man Trade-marks) begun to adopt, use and promote the Plaintiffs' Burning Man Trade-marks and direct public attention to their wares, services or business in a manner contrary to s. 7(b) of the *Trade-marks Act*.
15. These Defendants have also improperly sought registration of the Plaintiffs' Burning Man Trade-marks in their own name.

The Plaintiffs' Famous Burning Man Event

16. The Plaintiffs' "Burning Man" event is an iconic annual event that takes place in Nevada's Black Rock Desert the week leading up to and including Labor Day in the United States of America.

17. The Burning Man event is one of the best-known and most culturally significant art and community events in the world. It has been described as a combination art festival, social event and experiment in community living.

18. At Burning Man, massive crowds gather upon the playa (dry lake bed) to form a temporary city. Event participants enthusiastically dedicate themselves for the week to the spirit of community, art, self-expression and self-reliance, all in accordance with the mission statement and guiding principles of the Plaintiffs, which are:
 - (a) Radical Inclusion;

 - (b) Gifting;

 - (c) Decommmodification;

 - (d) Radical Self-reliance;

- (e) Radical Self-expression;
 - (f) Communal Effort;
 - (g) Civic Responsibility;
 - (h) Leaving No Trace;
 - (i) Participation; and
 - (j) Immediacy (the “Ten Principles of Burning Man”).
19. In 2013, more than 68,000 persons attended Burning Man, the vast majority of which were paid attendees.
20. The Plaintiffs’ Burning Man event traces its origins back to 1986, when a small group of 20 gathered together at Baker Beach in San Francisco to honour the Summer Solstice in a small but beautiful ceremony at which an 8-foot wooden figure was burned.
21. Word spread of the ceremony, and the following year 80 people were in attendance to celebrate a 20-foot figure being burned in honour of the Solstice.

22. By 1990, 800 people were in attendance and the Burning Man figure reached 40 feet in height.
23. Owing to logistics of such swelling participation rates, the event was moved from Baker Beach to the Black Rock Desert in Nevada.
24. As the community of participants grew, the event grew from a mere ceremony to a celebration of arts, culture and community that has continued to grow and expand to this day.
25. By 1994, roughly 2,000 persons attended Burning Man. The event was the subject of an Australian television documentary and was covered in print media from France, Germany and Great Britain.
26. By 1995, roughly 4,000 persons attended Burning Man. CNN began its annual coverage of the event.
27. By 1996, Burning Man had become an Internet phenomenon attracting roughly 8,000 participants from around the world.

28. By 1997, crowds swelled to roughly 10,000 participants and onsite media at the festival included CNN, ABC's Nightline, NBC, Time, Washington Post, German television and publications from England, France, Japan and Brazil.
29. By 2000, there were roughly 250 different registered media at the annual event providing coverage of it throughout the world.
30. Burning Man has continued to grow and expand into a event and community of astonishing proportions. In 2013 over 68,000 participants attended the event.
31. At the Burning Man event, Decommodification's licensee BRC designs and maintains a temporary "city" that is referred to each year as "Black Rock City" (the "City"). During the event, hundreds of art installations and civic spaces are built in the City by participants, and literally thousands of small events or gatherings are conducted in which participants share creative ideas.
32. At the 2013 event there were more than 600 "theme camps" funded and built solely by participants with support from BRC, which are large artistic installations or spaces combined with a participatory element. In each theme camp the group presents a performance, event or space which induces attendees to participate.

33. Participants also publish several daily newspapers, broadcast several radio stations, take photographs and create “yearbooks” to give away.
34. Many attendees engage in artistic expression by dressing in costume and participating in many of the events and performances.
35. Virtually all of the myriad art installations, spaces open to participants, stages and music and performance venues are designed, created, funded and operated by participants, with an infrastructure and guidance provided by BRC. The main installations provided by BRC are a large art installation in the shape of a human figure (the “Man”) and one central gathering area (the Center Camp Café, a large Bedouin-style circular tented area).
36. BRC also provides the City’s infrastructure, laying out the perimeter of the event and the City streets.
37. BRC also assists in placement of participants’ camps, provides security, port-a-potties, medical facilities and similar types of infrastructure services.
38. BRC also provides support in the form of heavy equipment and expertise in building.
39. BRC further provides grants to artists and participants who are bringing large scale art installations to the City.

40. Thus, the Plaintiffs' intention is to bring together a community of individuals of similar artistic and spiritual ideas and to create an environment in which individuals are encouraged and enabled to express artistic interests and join other artists in the creation of their vision.
41. Further, the Burning Man event operates on a "gift economy," and this decision to avoid commerce at the Event has created a generous outpouring from participants.
42. Unlike at most concerts or festivals, nothing is permitted to be sold or bartered at the Burning Man Event (the only exception is for ice and coffee, which are sold by volunteers, with all profits donated to local municipalities). There is no food vending, no vending of drinks, no vending of clothes or supplies.
43. In place of commercial vending or barter, members of the community bring items, performances and services, and freely gift these to any participant.
44. Groups of participants gather together during the year to build community artistic spaces and art installations which they bring to the Black Rock Desert, and freely invite participants to share in them, which include art installations, camps in which music, performances, food, drink, clothing, and other items and services are freely gifted, others which provide materials so that participants create their own artworks and costumes, or

camps where services such as medical and healing services, bicycle repair, counseling, discussions are provided, all free of charge.

45. For example, there are more than 100 camps which provide stages and sound systems for performances, music, speeches and discussions.
46. The world-renowned TED conferences regularly hold a TEDx conference at Burning Man, in which thousands of people come to discuss many important issues about community, the environment and the world.
47. Another principle of the Burning Man event is to be free from commodification. The Plaintiffs do not license the use of any Burning Man Trade-marks for commercial purposes, nor are sponsor advertisements and the like permitted at the event.
48. BRC volunteers throughout the year review any attempts by commercial companies to utilize Burning Man Trade-marks and imagery from the Burning Man events and report these to BRC, and BRC has an active group that polices such activities.
49. In the mid to late 1990s, the Plaintiffs began to oversee a growing network of regional bodies throughout the world dedicated to supporting the growing Burning Man community and promoting the Ten Principles of Burning Man as a method of community interaction.

50. These authorized regional bodies are required to operate in accordance with Decommodification's direct or indirect control, including by strictly observing the Ten Principles of Burning Man, in exchange for licensed permission to use the Plaintiff's intellectual property including the Burning Man Trade-marks.
51. Today, there are more than 50 authorized regional Burning Man communities located around the world in Africa, Asia, Australasia, Canada, Europe, South America and the United States of America.
52. In Canada, authorized regional Burning Man associations are based in Nova Scotia, Ottawa, Montreal, Toronto, Saskatchewan, Alberta, Vancouver and Victoria. Canadian regional associations of the Plaintiff have existed since at least approximately 1997.
53. The Plaintiff's Vancouver regional community has operated since at least 1999. The official Vancouver Burning Man regional organization is the Greater Vancouver Interactive Arts Society, a not-for-profit society ("GVIAS"), which operates today from the website *burningvan.ca*.
54. In addition to the main Burning Man event, the Plaintiff by itself and through its regionals such as GVIAS holds annual parties or gathering known as "Decompression."

55. The annual Decompression events serve as a local reunion for Burning Man community members shortly after the end of the annual Burning Man event, in order to strengthen community ties and to help with bring the Burning Man principles, which are developed during the annual Nevada Burning Man events, back into everyday life.
56. The Decompression events are also used to welcome newcomers into the Burning Man culture.
57. The Plaintiffs, through GVAIS, have used the Burning Man Trade-marks BURNING MAN and DECOMPRESSION in British Columbia for many years. These marks have also been used by other authorized Canadian Burning Man regionals throughout Canada for many years.
58. The Plaintiffs have also used the mark BURNING MAN in Canada since at least 1996, when their website *burningman.com* was launched. Tickets to the main Burning Man event have been sold and promoted to Canadians, including those in British Columbia, in association with the mark BURNING MAN on this website since at least as early as 1998.

59. During the last 3 years, Burning Man has sold approximately 9,000 tickets to the annual Burning Man event to individuals in Canada, and of these approximately 4,000 tickets were sold to individuals in British Columbia.

60. At all material times, the Plaintiffs' Burning Man Trade-marks have enjoyed goodwill and been distinctive in Canada, including without limitation in and throughout the Province of British Columbia.

The Defendants and their Unauthorized Activities

61. Defendants, on their *burnbc.org* website and related social media accounts (such as on *Facebook*), are passing themselves off as a Burning Man community and are directing public attention to their wares, services or cooperative business in a manner contrary to s. 7(b) of the *Trade-marks Act*.

62. The public is being misled into believing that there is an authorized relationship between the Defendants and the Plaintiffs and Plaintiffs' iconic Burning Man event and community, when in fact no such relationship exists.

63. On Defendants' website, the Defendants purport to promote and host their own cultural events in association with the Plaintiffs' Burning Man Trade-marks and while promoting the Ten Principles of Burning Man.

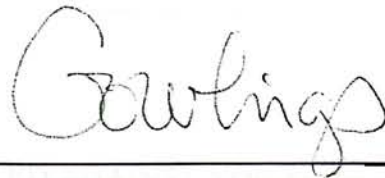
64. The Defendants attempt to mislead the public into believing that their "Burning Man" community and events have grown out of, are related to, based upon, affiliated with, endorsed by or otherwise associated with the Plaintiffs and their Burning Man event in some manner, none of which is true.
65. At no time have the Defendants individually or collectively received license or permission from the Plaintiffs for them to adopt, use or promote any of the Plaintiffs' Burning Man Trade-marks.
66. The Plaintiffs are not aware of the date on which the Defendants first commenced their unauthorized activities, nor the full scope of the Defendants' unauthorized activities, but all such facts are known to the Defendants and the Plaintiffs plead and rely in relation to the same.
67. The role and relationship between the individual Defendants and their collective in the unauthorized adoption, use and promotion of the Plaintiffs' Burning Man Trade-marks is not known to the Plaintiffs but is known to the Defendants.

68. By these acts, the Defendants have individually and collectively directed public attention to their wares, services or business in such a way as to cause or be likely to cause confusion in Canada, at the time they commenced so to direct public attention to them, between their wares, services or business and the wares, services or business of the Plaintiffs, contrary to s. 7(b) of the *Trade-marks Act*.
69. At all material prior times, the Defendants have had full knowledge of the Plaintiffs, their Burning Man Trade-marks and their famous event and community. It is believed that all of the individual Defendants have personally attended the Plaintiffs' Burning Man event.
70. The Defendants are not content to merely make unauthorized use and promotion of the Plaintiffs' Burning Man Trade-marks. They are also in the process of improperly attempting to seek ownership of the marks in Canada.
71. On or about 24 October 2012, the Defendants filed two applications in Canada to register the Plaintiff's trade-marks:
- (a) BURNING MAN; and
 - (b) BC DECOMPRESSION,

75. Thus, the Defendants admit that their use of the trade-mark "Burning Man" is meant to refer to the annual Burning Man event held by Plaintiff in Nevada in the United States, and to the Burning Man community administered by Plaintiffs in the United States, Canada and world-wide through its regional organizations and affiliates.
76. The Defendants' names and marks "Burn BC," "*burnbc.org*," "Burning Man" and "BC Decompression" are all confusing with the Plaintiff's Burning Man Trade-marks within the meaning of s. 6 of the *Trade-marks Act*.
77. The Defendants' unauthorized activities described above have caused the Plaintiffs damage, including irreparable damage, and allowed the Defendants to enjoy unjust revenues and profits.
78. The Plaintiffs' damage by reason of the Defendants' actions include loss of ability to exclusively control the goodwill associated with the Burning Man Trade-marks in Canada.
79. The Defendants' unjust revenues and profits are not known to the Plaintiffs but are known to the Defendants and the Plaintiffs plead and rely fully in respect of same.

80. At all material times, the individual Defendants have each and together engaged in a deliberate, willful and knowing pursuit of a course of conduct that constituted a passing-off and violation of the Plaintiffs' trade-mark rights, or which reflected an indifference to the risk of it.
81. The Defendants should be found jointly and severally liable to the Plaintiffs.
82. The Plaintiffs have repeatedly asked the Defendants to cease their complained-of activities but the Defendants refuse to do so and threaten to continue to do so unless restrained by this Court.
83. The Plaintiffs propose that this action be tried at Toronto, Canada. This action is not being pursued as a simplified proceeding.

April 22, 2014



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I hereby certify that the above document is a true copy of the original (issued out of) filed in the Court on the _____ day of _____ A.D. 20____

I hereby certify that the above document is a true copy of the original (issued out of) filed in the Court on the _____ day of _____ A.D. 20____

I hereby certify that the above document is a true copy of the original (issued out of) filed in the Court on the _____ day of _____ A.D. 20____

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Katie Kennedy
Kathy Brown

I HEREBY CERTIFY that the above document is a true copy of the original (issued out of) filed in the Court on the _____ day of _____ A.D. 20____
Dated this _____ day of _____ A.D. 20____

Robert M. Brown