

Court File No. T-2269-24

FEDERAL COURT
SIMPLIFIED ACTION

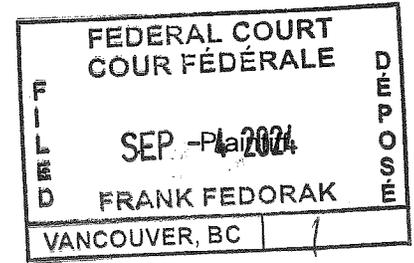
BETWEEN:

Tatiana Gorenstein

and

Meta Platforms, Inc.

Defendant



STATEMENT OF CLAIM

TO THE DEFENDANT:

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiff. 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 plaintiff's solicitor or, if the plaintiff does not have a solicitor, serve it on the plaintiff, and file it, with proof of service, at a local office of this Court

WITHIN 30 DAYS after the day on which this statement of claim is served on you, if you are served in Canada or the United States; or

WITHIN 60 DAYS after the day on which this statement of claim is served on you, if you are served outside Canada and the United States.

TEN ADDITIONAL DAYS are provided for the filing and service of the statement of defence if you or a solicitor acting for you serves and files a notice of intention to respond in Form 204.1 prescribed by the *Federal Courts Rules*.

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.

Date: September 04, 2024

Issued by:



Registry Officer

FRANK FEDORAK
REGISTRY OFFICER
AGENT DU GREFFE

Address of local office: Federal Court of Canada
Pacific Centre
P.O. Box 10065
701 West Georgia Street
Vancouver, British Columbia,
V7Y 1B6, Canada

TO: **Meta Platforms, Inc.**
1 Meta Road
Menlo Park, CA 94025
USA

CLAIM

1. The plaintiff claims:
 - a. damages for lost profits due to the termination of contractual relations between the Plaintiff and her clients after the Account was deactivated by the Defendant on May 29, 2024, in the amount of \$18,242 CDN;
 - b. damages for lost revenue and business opportunities due to the Plaintiff's inability to take in new clients after the Account was deactivated by the Defendant on May 29, 2024, in the amount of \$3,000 CDN;
 - c. damages for lost profit due to the Plaintiff's inability to sell inventory after the Account was deactivated by the Defendant on May 29, 2024, in the amount of \$3,000 CDN;
 - d. damages for mental distress, anxiety, humiliation, indignation, outrage as a result of the Defendant's actions, in the amount of \$5,000 CDN;
 - e. reputational damages, in the amount of \$5,000 CDN;
 - f. punitive and exemplary damages sufficient to punish the Defendant for engaging in this wrongful conduct and to deter similar conduct on their part in the future in the amount that this Court may deem appropriate;
 - g. an order that the Defendant restore the Plaintiff's Instagram account "@aceconsign";
 - h. prejudgment interest;
 - i. costs;
 - j. such further and other relief as this Honourable Court may seem just.

FACTS

2. The Plaintiff, Tatiana Gorenstein, is the owner and operator of a Canadian luxury goods resale and consignment business (the "Business") and all related business assets, including an Instagram business account, "@aceconsign" (the "Account").
3. On a contractual basis, the Plaintiff helps her clients resell their brand name items (e.g. bags and accessories) on the secondary market. The Plaintiff acts as an intermediary between sellers and buyers and receives a percentage of the sales proceeds once the items are sold.
4. Almost every day since 2016, the Plaintiff posts digital content (e.g. images, videos, social media posts, etc.) on the Account that draws attention to the Business and promotes sales.
5. Almost all sales in the Business are arranged with the help of the Account. The Account is the crucial channel for community outreach, customer engagement, communication with Instagram users, advertising, promotion and sales.
6. There is an economic relationship between the Plaintiff and the Defendant. Since 2016, the Plaintiff has paid thousands of dollars to the Defendant for advertising.

7. On May 11, 2024, the Defendant suspended the Account without any prior notice.
8. After the Account was suspended, the Defendant sent an email to the Plaintiff. The email contained a most general allegation of a breach of the Defendant's Terms of Use. The Defendant did not provide any specific cause for the deactivation of the Account.
9. In their email of May 11, 2024, the Defendant wrote:

"Thank you for taking the time to submit an appeal against the decision to disable your account. As a user of Instagram, you have agreed to our Terms of Use, including our policies on intellectual property, which state that you may not use our products to do or share anything that infringes someone else's rights or otherwise violates the law. If you believe your account was disabled in error, you can reply to this email explaining why you believe that your account did not go against our Terms of Use, in particular our policies on intellectual property."

10. On May 11, 2024, the Plaintiff sent an email to inform the Defendant that the allegation of a breach of the terms of use was not clear, and that no sufficient information was provided for the Plaintiff to understand the case against them and respond meaningfully to the allegations. Also, the Plaintiff provided details about the Business and explained why the Account did not go against the Defendant's Terms of Use. Also, the Plaintiff informed the Defendant that the deactivation of the Account had resulted in major disruptions to the operation of the Business, and that the Plaintiff was suffering reputational and monetary damages as a result of the deactivation. The Plaintiff asked the Defendant to restore the Account immediately.
11. On May 14, 2024, the Plaintiff emailed the Defendant again to inform the Defendant, among other things, that the Account was still disabled, that the Plaintiff still did not know why the Account was disabled, that the Plaintiff was not able to communicate with clients and followers; and that the deactivation of the Accounts interfered with the Plaintiff's contractual relations and business transactions and resulted in business losses.
12. On May 17, 2024, the Plaintiff sent another email to the Defendant regarding "Unfairly and Arbitrarily Deactivated Instagram Account "@aceconsign". Among other things, the Plaintiff informed the Defendant that the Account was deactivated without any prior notice, fair process or opportunity to respond or refute the allegations made against the Account.
13. On May 21, 2024, the Plaintiff sent a registered letter to the Defendant's head office in Menlo Park, CA asking to restore the Account (Canada Post Tracking number EM107114230CA). The Plaintiff complained that the Defendant's actions negatively impacted business operations, interfered with business relationships, disrupted contractual obligations, halted client communications, damaged business goodwill/reputation and produced significant and mounting financial losses. The Plaintiff assured the Defendant that the Account conformed to the terms and conditions of use and asked them to restore the Account immediately.
14. On May 21, 2024, at 5:57 PM, the Defendant restored the Account. At the same time, the Defendant sent an email informing the Plaintiff for the first time about the reason for the suspension, - allegedly because the Account was used to sell counterfeits. The Defendant wrote:

"Thanks for bringing this issue to our attention. In certain circumstances, we take targeted actions on accounts that we believe are selling or promoting counterfeits, which is not allowed on Instagram. Your account was incorrectly identified and removed on

that basis. Based on the information you provided, we have restored your account. We understand that action to resolve this matter.” [Emphasis added]

15. On May 29, 2024, at 7:56 AM, the Defendant once again deactivated the Account, in the same manner, without any prior notice. After the Account was suspended, the Defendant sent the Plaintiff an email identical to their general email of May 11, 2024, advising that the Account was disabled for violation of Instagram’s Terms of Use, in particular their policies on intellectual property.
16. On May 29, 2024, 10:03 AM, the Plaintiff sent an appeal letter to the Defendant by email. It was the same appeal letter that was sent by the Plaintiff and accepted by the Defendant on May 21, 2024 as a valid appeal with subsequent restoration of the Account.
17. On May 29, 10:10 AM, the Defendant replied to the Plaintiff by email refusing to restore the Account. The Defendant wrote:

“Thanks for contacting us. We regret to inform you that we are unable to restore your account. Following our review of your appeal, we continue to believe that your account was used to sell or promote counterfeit goods, which is not allowed on Instagram. The manufacture, promotion or sale of a counterfeit good is a type of trademark infringement that is illegal in most countries because it’s harmful to consumers, trademark owners and honest sellers.”
18. It took the Defendant no more than 7 minutes to read the Plaintiff’s email and three-page appeal letter, review the Account, decide the appeal, and then write down and deliver the decision to the Plaintiff.
19. On May 29, 2024, 10:17 AM, the Plaintiff sent an email to the Defendant pointing out that their decision not to restore the Account contradicted their own previous decision on the same issue.
20. On June 4, 2024, the Plaintiff sent another email to the Defendant to express concerns and doubts that the decision to permanently disable the Account was made on a comprehensible basis. The Plaintiff categorically denied the Defendant’s allegations that the Account was used to sell or promote counterfeit goods and asked the Defendants to provide concrete evidence or proof of the alleged violation and allow the Defendant to respond to it.
21. On June 10, 2024, the Plaintiff sent the Defendant an email with an appeal letter attached to it asking to reinstate the Account immediately and take necessary actions to prevent deactivations of the Account in the future.
22. On June 10, 2024, the Plaintiff sent the appeal letter to the Defendant’s head office in Menlo Park, CA by registered mail (Canada Post Tracking number EM107245456CA). The Defendant has not responded to the Plaintiff’s letter.
23. As of today, the Account remains deactivated.
24. After the Account was deactivated, the Plaintiff cannot run the Business properly.
25. The Plaintiff was in contractual relations with her consignment business clients. Those were returning consignors who provided the Plaintiff with a steady stream of inventory (the “Clients”).

26. After the Account was disabled, the Clients started to contact the Plaintiff by email and text messages asking why they could not find the Account on Instagram.
27. The Plaintiff had to contact the Clients to advise about the deactivation of the Account. The Clients then picked up items they had consigned with the Plaintiff and severed their contractual relations with the Plaintiff.
28. By deactivating the Account, the Defendants prevented the Plaintiff from accessing data stored there and blocked the Plaintiff's major channel of communication with Instagram users, including prospective buyers.
29. Before the Account was deactivated, the Plaintiff was engaged in ongoing written communications through the Account with prospective buyers regarding business transactions. After the Account was unexpectedly deactivated, those communications came to an abrupt stop. The Plaintiff lost connection with the prospective buyers, and the buyers lost connection with the Plaintiff.
30. After the Account was deactivated, the Plaintiff was unable to take new goods on consignment and had to turn down prospective consignors.
31. Before the Account was deactivated, the Plaintiff had been investing money into buying goods with the intention of selling them using the Account. Now, when the Account is deactivated, the Plaintiff cannot sell those goods.
32. This is not the first time the Defendant has destroyed the Plaintiff's business by deactivating her Instagram business accounts in the same manner, without fair process or any adequate notice.
33. The Plaintiff used to operate Instagram business accounts "@banyanswim" and "@banyanswimofficial".
34. Both "@banyanswim" and "@banyanswimofficial" were used to advertise, promote and operate the Plaintiff's swimwear line of business.
35. "@banyanswim" had more than 63,000 followers and assisted numerous swimwear sales.
36. "@banyanswim" was arbitrarily deactivated by the Defendant in or about October 2021.
37. "@banyanswimofficial" was arbitrarily deactivated by Instagram in or about May 2022.
38. On numerous occasions, the Plaintiff contacted the Defendant asking to restore the Accounts.
39. The Defendant never restored "@banyanswim" and "@banyanswimofficial", nor did they provide any information for the Plaintiff to understand why those accounts were permanently deleted.
40. All data that the Plaintiff stored on "@banyanswim" and "@banyanswimofficial", including posts, digital content, follower information, direct messages, was permanently lost and the business ceased to exist.
41. Instagram business accounts "@aceconsign", "@banyanswim" and "@banyanswimofficial" had been a source of income for the Plaintiff before the Defendant deactivated them.

42. Over the course of the last eight years, the Plaintiff has invested thousands of hours of work and tens of thousands of dollars into the development and maintenance of “@aceconsign”, “@banyanswim” and “@banyanswimofficial”.
43. As a result of the Defendant’s arbitrary actions, the Plaintiff has lost access to all her Instagram business accounts, and she suffers financial losses, psychological stress and unjust hardship.

The plaintiff proposes that this action be tried in the City of Vancouver, British Columbia.

Date: September 04, 2024

(Signature of plaintiff)

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