

Court File No.

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

GREEN SHIFT INC.

Plaintiff

- and -

**THE LIBERAL PARTY OF CANADA and
THE FEDERAL LIBERAL AGENCY OF CANADA**

Defendants

STATEMENT OF CLAIM

TO THE DEFENDANTS:

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 an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the *Rules of Civil Procedure*, serve it on the plaintiff's lawyer or, where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it, with proof of service in this court office, **WITHIN TWENTY DAYS** after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or 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 is sixty days.

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Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the *Rules of Civil Procedure*. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date _____

Issued by _____

Local Registrar

Address
of court
office:393 University Avenue
10th Floor
Toronto, Ontario M5G 1E6

TO: Liberal Party of Canada
81 Metcalfe Street, Suite 400
Ottawa, ON K1P 6M8

AND TO: Federal Liberal Agency of Canada
81 Metcalfe Street, Suite 400
Ottawa, ON K1P 6M8

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CLAIM

1. The plaintiff claims:
 - (a) A declaration that the defendants 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, including Ontario, with the wares, services, or business of the plaintiff, contrary to section 7(b) of the *Trade-marks Act* and the common law tort of passing off;
 - (b) An interim, interlocutory, and permanent injunction restraining the defendants, and their agents, employees, and successors, and anyone under their control or with knowledge of the injunction, from:
 - (i) using or displaying GREEN SHIFT, the GREEN SHIFT, or any mark confusingly similar to the trade mark GREEN SHIFT, as or as part of any trade mark, trade name, domain name or otherwise;
 - (ii) directing public attention to their wares, services or business in such a manner as to cause, or be likely to cause, confusion with the wares, services or business of the plaintiff;
 - (iii) directly or indirectly passing off their wares, services or business as or for those of the plaintiff;
 - (c) An order requiring the defendants to destroy or remove under oath, in an environmentally conscious manner, or deliver up to the plaintiff, as the plaintiff may elect, all documents in print or electronic form, including all promotional, advertising, and campaign materials, the use, display or reproduction of which would offend the injunction sought in subparagraph (b) above; and requiring the defendants to remove all documents or materials available on the internet and all references to documents or materials available on the internet, the use, display or reproduction

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of which would offend the injunction sought in subparagraph (b) above;

- (d) General and special damages for passing off in the amount of \$8,500,000;
- (e) Aggravated and punitive damages in the amount of \$250,000;
- (f) Pre-judgment and post-judgment interest at the maximum allowable rate, and any recoverable taxes on the amounts awarded including G.S.T.;
- (g) Costs of this action on a substantial indemnity basis; and
- (h) Such further and other relief as is considered just and proper by this Honourable Court.

Identification of the Parties

2. The plaintiff, Green Shift Inc. ("Green Shift") is a corporation incorporated under the laws of Canada, with its head office at 10 Morrow Avenue, Toronto, Ontario.
3. The defendant, The Liberal Party of Canada, is an association registered as a political party under the *Canada Elections Act*, with its national headquarters at 81 Metcalfe Street, Suite 400, Ottawa, Ontario.
4. The defendant, the Federal Liberal Agency of Canada, is a corporation incorporated under the laws of Canada as the chief agent for The Liberal Party of Canada as required under the *Canada Elections Act*, with its head office at 81 Metcalfe Street, Suite 400, Ottawa, Ontario.

Green Shift's Business

5. Green Shift is an environmental organization that bills itself as a facilitator of environmental stewardship. It operates an environmental program in

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association with the trade mark GREEN SHIFT that includes environmental education, consulting, analysis and supplying "green" products.

6. Green Shift was incorporated in 2001. Since then, Green Shift has grown into a leader in helping businesses attain their objectives in an environmentally responsible way.

Green Shift's Trade Mark Rights

7. Green Shift is the owner of the GREEN SHIFT trade mark. Since its incorporation, it has continuously used, advertised, and promoted the GREEN SHIFT trade mark in Canada, including Ontario, in association with its business, as particularized below.
8. Green Shift offers environmental consulting services in association with the GREEN SHIFT trade mark, including: environmental assessments; planning waste reduction measures; environmental policy development; green procurement (*i.e.* education concerning and sourcing of environmental products or services); marketing and communication relating to environmental issues; and assistance with water and energy reduction.
9. The GREEN SHIFT trade mark is also used on environmentally conscious products, including but not limited to: food service products and packaging such as non-toxic and biodegradable cups, bowls, cutlery, containers, and bags; non-toxic and biodegradable cleaning products; fair trade coffee; and chlorine free, high post-consumer, recycled, paper products.
10. Green Shift adopts and promotes practices and products that it has determined to be the most environmentally responsible choice, and only associates the GREEN SHIFT trade mark with those practices and products.

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11. Before adopting or promoting an environmental practice or product, Green Shift conducts a lifecycle analysis of the related environmental impact. Its analysis is based on existing reputable third party criteria and its own internal standards.
12. Green Shift is creating a network of environmental leaders so that the public and/or customers of these businesses or institutions can identify that they are environmental leaders and participants in the GREEN SHIFT program.
13. Green Shift promotes itself and the GREEN SHIFT trade mark throughout Canada on its website found at <www.greenshift.ca>, as well as by advertising in industry journals and weekly newspapers and by distributing flyers at events that it is involved with. Green Shift representatives have also lectured at environmental conferences and have appeared on national radio and television to promote Green Shift's philosophy and its environmental program.
14. By reason of Green Shift's extensive use and promotion of the GREEN SHIFT trade mark as particularized above, Green Shift has developed a valuable reputation in association with the GREEN SHIFT trade mark as a trusted and independent consultant and evaluator of environmental practices and products.
15. The GREEN SHIFT trade mark has become well known in Canada, including Ontario, and there is enormous goodwill attached to it.

The Defendants' Unlawful Acts

16. On June 19, 2008, the defendants and the leader of The Liberal Party of Canada, Stéphane Dion, launched a major political campaign named "the Green Shift". This campaign is directly related to pollution reduction measures and is promoted as an environmental program or plan (the "Plan").

17. Since its launch, the defendants have used "Green Shift" and "the Green Shift" as the cornerstone of their platform in promoting the Plan across Canada. The defendants' "Green Shift" campaign has been promoted in an extensive media blitz, including television and print advertising, numerous public speeches and national news conferences from behind podiums or in front of posters adorned with "the Green Shift", and by directing traffic to a website promoting their environmental program at <www.thegreenshift.ca>.
18. The defendants were also quick to mass-produce and widely distribute the "Green Shift" handbook and "Green Shift" brochure. This flood of literature that is already in the hands of the public will almost certainly be impossible to retrieve.

The Defendants' Prior Knowledge of Green Shift

19. The defendants were aware of Green Shift and its prior and ongoing use of the GREEN SHIFT mark before launching the Plan. On June 18, 2008, the day prior to launching the Plan, a representative of the defendants contacted Green Shift to advise that they would be using "the Green Shift" mark for their Plan.
20. Following the launch, on June 23, 2008, Garth Turner, Member of Parliament for Halton and a member of the defendant, The Liberal Party of Canada, wrote the following on his blog:

Were the Liberals just too dumb to notice? Have they ever heard of Google in Ottawa? Or the thingy that you use to register domain names?

Actually, here's the story: Over the months that we worked on this concept of tax shifting, various names were used for the project, the "Green Shift" being decided upon relatively late in the process. Once that happened, a lot of branding quickly took place. One obvious key element was the URL.

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Within minutes, the existing greenshift.ca site was located, and a strategy discussed for dealing with the commercial company operating it. They would be contacted in advance (which happened). I was in the meeting that dealt with this, as well as the raft of domain names which the party snapped up surrounding this name. All of them were legally registered, of course.

21. The defendants deliberately adopted "the Green Shift" mark with full knowledge of Green Shift's prior rights.

The Defendants' Activities Have Caused and are Likely to Cause Confusion

22. The defendants' use of "the Green Shift" mark for their environmental tax program and their use of the domain name <www.thegreenshift.ca> have caused actual confusion in Canada, including Ontario. Since the launch of the Plan, Green Shift has been inundated with telephone calls and emails, including numerous angry and threatening calls and emails, from people who mistakenly assumed there was an association between the plaintiff and the Liberal Party, or their environmental tax program.
23. Further, members of the public are likely to be confused by the defendants' use of "the Green Shift" for their Plan. The imperceptible difference of including "the" before GREEN SHIFT has made no difference to the result: the defendants are causing and are likely to cause confusion with the plaintiff's GREEN SHIFT trade mark.
24. As stated above, the Liberal Party's Plan is directly related to pollution reduction measures and is promoted as an environmental program. As such, members of the public who are familiar with Green Shift are likely to be misled into believing that Green Shift has authorized or endorsed the Liberal's environmental tax program, or is somehow affiliated with it, or that it is part of the plaintiff's GREEN SHIFT program – when none of this is true.

25. Further, some members of the public who become aware of the Plan before they become aware of Green Shift, will believe that Green Shift has appropriated the defendants' mark, or that Green Shift is trying to trade on the defendants' name or goodwill, or that Green Shift is offering services for the defendants, none of which is true.
26. The defendants' use of the <www.thegreenshift.ca> domain name is also likely to cause confusion with the plaintiff's website at <www.greenshift.ca>, and cause misdirected internet traffic. The defendants acknowledge the very real likelihood of such confusion by the following disclaimer on their website, apparently intended to re-direct traffic that arrives at the defendants' website in error:

Disclaimer: This site is authorized by the Federal Liberal Agency of Canada, registered agent for the Liberal Party of Canada.

It is not affiliated with Green Shift Incorporated. The following is a link to the Green Shift Incorporated website:
www.greenshift.ca

27. The disclaimer, which appears in fine print on one page of the website, has not mitigated the likelihood of confusion; indeed there has been significant actual confusion despite it.

The Defendants' Activities are Causing Serious and Irreparable Harm

28. The defendants' activities are causing significant and ongoing harm to Green Shift's reputation and the valuable goodwill attached to the GREEN SHIFT trade mark.
29. Green Shift has invested significant time, money and effort over many years to build its reputation, and to build the goodwill associated with the GREEN SHIFT trade mark. Green Shift has built that reputation independent of government or political affiliations.

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30. The defendants' actions threaten Green Shift's non-partisan reputation. They have also been particularly damaging since they come at a time when Green Shift was just starting to reap the benefits of its years of hard work, and when the need for environmentally sensitive choices is becoming more pressing and gaining momentum.
31. The defendants' massive promotion of the Plan in association with "the Green Shift" is eroding the distinctiveness of the plaintiff's GREEN SHIFT trade mark and the public's exclusive association of the trade mark with Green Shift. If the defendants' activities continue, GREEN SHIFT will cease to function as a trade mark owned by the plaintiff. This constitutes irreparable harm.
32. Furthermore, current and potential customers, who do not wish to have any association with the Plan or the Liberal Party, are now being deterred from doing business with Green Shift because they are being misled into believing that there is such an association, or they are fearful that their customers will believe there is such an association.
33. This loss of potential customers, and future business from existing customers, cannot be calculated with any certainty, and also constitutes irreparable harm, in terms of both lost sales, and in terms of damage to Green Shift's valuable reputation, which is symbolized by the GREEN SHIFT trade mark.
34. By their acts as described above, the defendants are directing public attention to their wares, services, or business so as to cause or be likely to cause confusion between their wares, services, or business and the wares, services, or business of Green Shift, contrary to section 7(b) of the *Trade-marks Act* and contrary to the common law tort of passing off. Green Shift is entitled to recover compensation for the damages it is suffering and will continue to suffer as a result of the defendants' actions.

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35. The defendants' actions as particularized above were undertaken with full knowledge of Green Shift's prior rights and with the deliberate intention of appropriating the GREEN SHIFT trade mark as their own, without regard for the damage caused to the plaintiff. In essence, the defendants have sought to "hijack" the GREEN SHIFT trade mark for themselves.
36. The defendants knew or ought to have known that their activities would essentially destroy the ability of the GREEN SHIFT mark to identify only the wares, services and business of Green Shift, and therefore to function as a trade mark. The defendants' conduct justifies an award of aggravated and punitive damages in the amount of \$250,000.
37. Green Shift's solicitors have written to the defendants complaining of the defendants' unlawful conduct, and demanding that the defendants cease all use and display of GREEN SHIFT or the GREEN SHIFT as a trade mark, trade name and/or domain name. The defendants have refused to comply. Unless enjoined, the defendants threaten to continue their unlawful conduct.
38. Green Shift proposes that this action be tried at Toronto.

Date: July 9, 2008

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