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Up In Smoke: Imprisoned For Contempt of Court

A recent Federal Court decision has given new meaning to the notion of criminalizing marijuana. The case of *Trans-High Corporation v Hightimes Smokeshop and Gifts Inc* (2015 FC 1104) is perhaps one of the first times marijuana related trade-mark infringement has landed someone in jail.

The Applicant owns the HIGH TIMES trade-mark. In addition to publishing a magazine, which focuses on the "interests of counterculture, including, but not limited to, the medical and recreational uses of marijuana", the Applicant also operates the website www.hightimes.com. The Respondent, formerly known as Hightimes Smokeshop and Gifts Inc., is presently known as "Stay High Live High Inc."

Justice Manson of the Federal Court ruled earlier this year that the Respondent infringed the HIGH TIMES trade-mark and was permanently enjoined from selling, distributing or advertising any goods or services in association with it, or any other trade-mark or trade-name likely to be confused with it.

The Respondent failed to comply, leading to contempt proceedings. The Respondent and its director, Mr. Muhammad, pled guilty to five counts of contempt. While imprisonment is always a penalty option for contempt proceedings, Justice Fothergill, of the Federal Court, was clear that "the Court should take special care in imposing a sentence of imprisonment upon a first offender". However, he went on to note that in the event all fines and costs were not paid within 30 days, Mr. Muhammad was liable to be imprisoned.

Imprisonment for contempt of court is rare; this is particularly true in the context of trade-mark infringement. The issue in this case was not an inability to pay as much as the Respondent's "brazen indifference towards the rights of the Applicants and the authority" of the court.

Despite numerous opportunities to offer an explanation, demonstrate an inability to pay or simply to pay the outstanding fines, the Respondent failed to do so. On an *ex parte* motion, Justice Fothergill ordered Mr. Muhammad to be arrested and imprisoned for a period of not less than 14 days and until all fines had been paid. This unconventional approach to the enforcement of intellectual property rights appears to have

produced results. Mr. Muhammad made full payment of outstanding fines and costs totalling $122,833.66 within a month of the Order.

The threat of less than one month in jail yielded full payment of outstanding sums – something no court order was able to do. However, sending a party to prison on an *ex parte* motion is rare and it is tough to imagine that such an approach would be regularly repeated. Nevertheless, the court's willingness to invoke such measures to enforce court orders is instructive for future trade-mark infringement actions.