

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE MR. JUSTICE CRANE)
) Friday the 24th day
) of November, 2006
)

BETWEEN:

COLLEGE OF OPTOMETRISTS OF ONTARIO

Applicant

and

SHS OPTICAL LTD., DUNDURN OPTICAL LTD. and
JOHN DOE, all carrying on business under the name
GREAT GLASSES; JOANNE MARIE BERGEZ and
BRUCE BERGEZ

Respondents

and-

COLLEGE OF OPTICIANS OF ONTARIO

Intervenor

JUDGMENT

THIS APPLICATION was heard on October 25 and 26, 2006 without a jury at Hamilton, Ontario in the presence of counsel for the applicant, counsel for the intervenor and Bruce Bergez appearing in person,

ON READING the Notice of Application and the evidence filed by the parties and on hearing the submissions of counsel for the applicant, counsel for the intervenor and Mr. Bergez personally, no one appearing for the remaining respondents although duly served.

1. **THIS COURT ORDERS** that the Respondents Bruce Bergez and Joanne Marie Bergez are in contempt of the Judgment of the Honourable Justice Harris dated June 24, 2003, and have been in contempt since the issuance of the Judgment continuously to the hearing of this Application, in that the persons engaged in prescribing and/or dispensing at each Great Glasses store have been doing so in breach of the *Regulated Health Professions Act 1991*, R.S.O. 1991 c.18.

MONETARY ORDERS

2. **THIS COURT ORDERS** that Bruce Bergez shall pay a fine in the amount of \$1,000,000.00 by cheque or other financial instrument, payable to the Minister of Finance of Ontario by deposit with the Registrar of the Superior Court of Justice located on the first floor of the John Sopinka Court House, 45 Main Street East, Hamilton, Ontario, within 14 days of November 24, 2006.
3. **THIS COURT ORDERS** that should the fine not be paid within 14 days of this Judgment, above ordered, enforcement shall be by the Attorney General of Ontario pursuant to s.143(2) of the *Courts of Justice Act*, R.S.O. 1990 c.43, as against each respondent and Ontario Optical Development Corp., jointly and severally, including warrants for committal to each of Bruce Bergez and Joanne Marie Bergez and that each respondent and Ontario Optical Development Corp. shall be jointly and severally liable for the payment of the aforesaid fine.
4. **THIS COURT ORDERS** that the Registrar shall deliver a copy of this Judgment to the Director of Provincial Offences Act and Strategic Planning, 2nd Floor, 720 Bay Street, Toronto, Ontario.

5. **THIS COURT ORDERS** that going forward the respondents shall jointly and severally be liable to pay a fine of \$50,000.00 for each and every day that they are not in compliance with this Judgment.

NON-MONETARY ORDERS

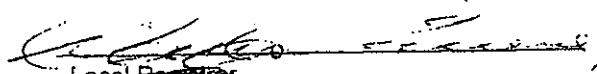
6. **THIS COURT ORDERS** that Bruce Bergez and Joanne Marie Bergez shall jointly and severally be accountable to this Court to purge their contempt by forthwith doing the following:

- (a) The respondents shall permanently post a prominent sign in all of their stores, in a form to be approved by the Court, stating that customers must have a prescription from an optometrist or a physician before any person associated with or employed by Great Glasses can dispense subnormal vision devices, contact lenses or eyeglasses and that these items cannot be dispensed on the basis of the Eyelogic test performed by Great Glasses.
- (b) The respondents shall run a prominent notice in the Hamilton Spectator once a week for four weeks, in a form to be approved by the Court, to the same effect as the notice requested in subparagraph 6(a) above.
- (c) The respondents shall permanently refrain from advertising in any form to the public in such a way as to lead the public to believe that subnormal vision devices, contact lenses or eyeglasses can be dispensed to them on the basis of the eye tests performed by Great Glasses and all Great Glasses advertisements shall contain a specific prominent statement that glasses cannot be dispensed on the basis of the Great Glasses eye tests

and that customers must have a prescription from an optometrist or a physician.

- (d) The respondents shall give to any person who has purchased a Great Glasses franchise or who inquires about purchasing such a franchise:
 - (i) a true copy of the Judgment of the Superior Court of Justice dated June 24, 2003; and
 - (ii) a true copy of this Judgment.
 - (e) The respondents shall insert into all their franchise agreements a specific term that the franchise operation must be operated in strict accordance with the Judgment of the Superior Court of Justice dated June 24, 2003 and this Judgment.
 - (f) The respondent, Bruce Bergez, shall personally ensure through the institution of appropriate business practices, mode of business and instructions, that dispensing of subnormal eyewear is in accordance with a prescription written by an optometrist or qualified physician specifically for that patient and for the time of dispensing.
7. **THIS COURT ORDERS** that the applicant is granted leave to motion this Court for such orders as may be necessary to carry out the mandatory orders within this Judgment.

8. **AND THIS COURT ORDERS** that the respondents shall pay the applicant its costs of this Application on a substantial indemnity scale, to be fixed by Mr. Justice Crane upon motion made with the appropriate materials served upon the respondents Bruce Bergez and Joanne Marie Bergez.


Local Registrar

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College of Optometrists of Ontario
Applicant and SHS Optical Ltd et al.
Respondents

Court File No: 05-18863

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Hamilton

JUDGMENT

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