

**IN THE HIGH COURT OF UTOPIA**

**Before: Mr. Justice More**

**B E T W E E N:**

**HALF MOON YOGA STUDIOS LTD.,**

Claimant,

**and**

**CELESTIAL SPORTS LTD.,**

Defendant.

**Mr. Justice More:**

1. In this application, the Claimant, Half Moon Yoga Studios Ltd. (“Half Moon Yoga”), seeks a preliminary injunction to restrain the Defendant, Celestial Sports Ltd. (“Celestial”), from using the mark ½ MOON as the name of a mobile application for locating, and registering for, local yoga classes, pending the outcome of this action. Under the law of Utopia, the minimum standards for granting preliminary injunctions are: (1) a likelihood of success on the merits; and (2) irreparable injury in the absence of injunctive relief. For the reasons set forth hereafter, the Court grants the application, having accepted Half Moon Yoga’s cross-undertaking that it will compensate Celestial Sports if the Court later finds that the injunction was erroneously granted and has caused loss to Celestial Sports.

**Findings of fact**

2. Half Moon Yoga is a company incorporated under the law of Utopia, with a principal place of business at 105 Hillside Avenue, Eden, Utopia. Half Moon Yoga is a yoga studio that was founded in 1998 by two yoga-enthusiast sisters, Hope and Chloe McAndrews.
3. Celestial Sports is also a company incorporated under the law of Utopia with a principal place of business at 17 Sunnyvale Street, Chakra City, Utopia. Celestial Sports was founded in 2016 by a 25-year-old computer genius, Wayne Gorman, when he used the profits from the sale of his first start-up to acquire the assets of

the sporting goods store Half Moon Ltd., then in bankruptcy, with plans to revive and modernize the company.

### **Half Moon Studios**

4. Hope and Chloe McAndrews are the two youngest children in a family of five children born to Helene and Malcolm McAndrews in Eden, Utopia. Hope and Chloe were born two years apart in age. Like their older siblings, Hope and Chloe both attended the University of Eden, where they both played on the university volleyball team. When Hope was sidelined during her junior year as a result of a back injury and was forced to refrain from any strenuous exercise, her physical therapist encouraged her to try yoga. Having recently learned about the benefits of meditation in her Eastern Religion class, Chloe readily agreed that yoga was just the thing Hope needed and agreed to take a yoga class with her to try it out. From their very first class, they were hooked, and they became regulars at the morning yoga classes offered by the physical education department at the University of Eden. By the time Chloe was in her final year, she had become quite an expert, and the yoga instructor often invited her to demonstrate poses to the class and to lead the classes as a substitute yoga instructor from time to time.
5. When Hope graduated, she accepted an offer as an analyst with an investment bank that promised challenging work, long hours, and more money than she could imagine. Chloe did not share her sister's affinity for numbers and, being more of a creative person, was more comfortable in the University art studio, where she attended every drawing and painting class in the curriculum. For her senior project, Chloe compiled a series of drawings that illustrated the 13 fundamental yoga poses. When they were exhibited in the Student Center, her drawings received considerable interest and favorable reviews in the *Campus News* weekly newsletter. Chloe graduated with a major in Visual Arts and respectable grades, but without any desire to sit behind a desk all day and without prospects for gainful employment. She moved into Hope's spacious downtown loft upon graduation, where she had plenty of time and space to contemplate what she was going to do with her life and to practice her yoga.

6. Chloe eventually became a certified yoga instructor. She did not have the resources to open her own studio, so she gave personal yoga lessons to friends and to those who came across her advertisements online or who found one of the printed fliers she regularly deposited in the local coffee shops. Chloe's yoga classes were oriented around the use of the dynamic "Half Moon" pose, which was her favorite pose, and so she decided to use the name "Half Moon Yoga," which she coupled with her drawing of a yogi (a person who practices yoga) performing the Half Moon pose from her final-year art project, as her logo on her business cards and fliers:



7. In 1998, Hope and Chloe took an extended vacation to the famous Vinyasa Sun Salutations Yoga Retreat in Chakra City, where they studied with the esteemed Yogi Valstrom Behar, who was known for his innovative and engaging methods of teaching yoga. While at first Hope struggled to wean herself from her mobile phone and computer, after a few days she rekindled her love of yoga and embraced it with enthusiasm. Nestled in the beautiful but spartan accommodations of the yoga retreat, surrounded by gorgeous vistas of the nearby mountains, and feeling empowered and inspired by their daily regimes with Yogi Behar, Hope and Chloe hatched a plan to open a yoga studio in Eden. It was an idea that Chloe had been toying with for a while, but with Hope now on board (to help fund it and run the business side of the studio), and armed with the skills they learned from Yogi Behar, they decided to turn their idea into reality.
8. Upon their return to Eden from the yoga retreat, Hope and Chloe located and leased a wonderful space in a warehouse on a sunny street in West Eden, applied a fresh coat of lemon chiffon paint, installed light bamboo wood floors, put

together a website and some promotional materials, and completed the schedule of classes that would be taught. They incorporated their business as “Half Moon Yoga Studios Ltd.” and decided to continue using the Half Moon pose drawing as their logo (the same drawing that Chloe had created as part of her senior art project), which they printed on a big sign on the side of the warehouse and on their other promotional materials.



9. Half Moon Yoga started out with a small but loyal clientele, which grew in the ensuing years, as yoga became more popular. The growing buzz about Half Moon Yoga increased when a local news station did a feature story on Hope and Chloe and their engaging teaching style, and a very complimentary article was published in *Women's Sports* magazine on July 15, 2004, entitled “Over the Moon for Half Moon,” which noted:

Local yoga enthusiasts are “over the moon” for Half Moon Yoga. Hope and Chloe McAndrews have tapped into the growing popularity of yoga by opening a ultra-hip new yoga studio in Eden that offers a wide variety of classes infused with equal measures of energetic flow and Zen relaxation. As indicated by the name, the well-known Half Moon pose is the fundamental pose that is integrated into each of their classes—and the McAndrews sisters are eager to emphasize the theme. According to Chloe McAndrews: “The Half Moon pose is such an important cornerstone for those practicing yoga because it combines a horizontal grounding with a dynamic upward stretch that engages the key core chakras. It is a pose that everyone should know and perform regularly to fully activate both physical and spiritual well-being.”

10. Before long, they had waiting lists for all their classes and demand for more. By all accounts, Half Moon Yoga was a major success. By 2008, Hope and Chloe

had opened several other locations around the city of Eden, each location offering a variety of different yoga classes and each having its own juice bar café and a small store that sold yoga pants and yoga shirts bearing the HALF MOON YOGA trademark. Half Moon Yoga also launched a website ([www.halfmoonyogastudio.com](http://www.halfmoonyogastudio.com)), on which it advertised its class schedule and from which customers could purchase its yoga apparel.

11. Encouraged by the growing reach (and stretch) of their yoga program, the McAndrews sisters wrote a book in 2007 and also soon after released a series of instructional videos on the practice of yoga. In 2008, they embarked on a nationwide promotional tour to promote their book and videos, which included book signings at book stores and sporting goods stores as well as appearances on *The Morning Show* and *Happy Day Utopia*, where they put on demonstrations with the help of the shows' hosts, all of whom were clad in yoga attire prominently bearing the HALF MOON YOGA mark. Their agent also eagerly rushed to sign distribution agreements with numerous book stores and sporting goods stores (including Sports Outlet, Half Moon Sports, Sports Etc., and Workout City) to sell the Half Moon Yoga books and videos.
12. Half Moon Yoga is the owner of the three trademark registrations (listed below) on the Register of the Utopia Intellectual Property Office ("UIPO"). Each of the registration applications was filed on February 15, 1998, and each trademark was registered on December 16, 1999. Each trademark is in force, according to UIPO records.

- (1) Utopia Trademark No. 5,234,716 for the following mark:



registered in relation to “yoga instruction services” in International Class 41.

(2) Utopia Trademark No. 5,234,720 for the words HALF MOON YOGA registered in relation to “yoga pants and yoga shirts” in International Class 25.

(3) Utopia Trademark No. 5,234,722 for the following mark:



registered in relation to “yoga instruction services” in International Class 41.

### **Celestial Sports**

13. From an early age, Wayne Gorman was fascinated with outer space. Perhaps inspired by the outer space décor of his childhood bedroom, he read and memorized every book in the children’s astronomy section of the Eden Library and knew the names of the planets in our solar system and important facts about them. He loved to go to the Chakra City Planetarium and begged his parents to take him there almost every weekend. By the age of seven, he had learned how to write computer code and, by the age of eleven, he had developed his first computer game app, which he called “Galaxytag.”The game involved racing spaceships throughout the galaxy while avoiding dangerous asteroids and comets and collecting shooting stars and other space treasures.
14. Wayne’s exceptional skills with computers came as no surprise to his parents, as his father, Carl, was a head programmer at Chakra City Software and his mother, Betsy, was the Chief Technical Officer at Utopian Designs, an online design-it-

yourself furniture store. Since Wayne and Carl spent many hours on the weekends hunkered over the computer, Betsy encouraged Wayne to get exercise by going for a Saturday morning run around town or by joining her in the late afternoons for some yoga on their back porch. As he grew up, Wayne became an avid runner and he found that he often got the most amazing ideas about new computer programs during a long run.

15. When he was 19, Wayne ran in the Chakra City marathon for the first time, his mother running with him. As he wound his way through the city park at mile 16, Wayne found himself pondering the question of whether he would bike to work every day. He wanted to ride his bike, because it was good for the environment and helped him squeeze in a bit of exercise at the beginning and end of the day, but the route to work involved biking over a bridge with a narrow walking path on the side and crossing multiple busy roads at rush hour. Then, Wayne had a brainstorm. He worked out the logistics in his head during the remaining 10 miles of the race and, when the marathon was over, Wayne rushed home to begin developing his new program for locating and charting bike-friendly roads in the city.
16. Wayne launched his mobile app, Bikeorbit, a few months later, and it became an instant success. Interest in the Bikeorbit app was so great that Wayne enlisted the help of numerous friends and relatives who lived nearby to keep up with the demand of charting and tracking bike-friendly roads to update the app. Before he knew it, the app was downloaded over two million times and Wayne was getting offers from major software companies who wanted to buy his program. While Wayne was proud of the success of the Bikeorbit app, the demands of maintaining and updating the app took too much time, and Wayne wanted to focus on other things. Wayne finally agreed to sell his rights in the program for an enormous amount of money which, he believed, would give him the opportunity to start a business of his own—one that would, ideally, combine his two favorite things: sports and technology.
17. In 2015, Wayne found the perfect opportunity. He learned that a once-popular sporting goods store called “Half Moon Sports,” located in Chakra City, had

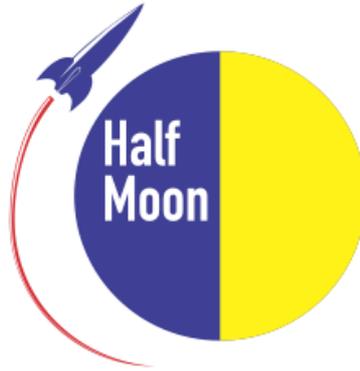
fallen victim to mismanagement by its owner as well as to competition from the larger national sporting goods chain stores and had filed for bankruptcy on July 1, 2015. At that time, the company hung a sign on its door that said:

**CLOSED FOR BUSINESS.**

**THANK YOU FOR 40 WONDERFUL YEARS.**

**KEEP REACHING FOR THE STARS, UTOPIA ATHLETES!**

18. Having fond memories of going to Half Moon Sports as a child to buy his running shoes and tennis racquets, and recalling that his mother bought her running gear and colorful yoga mats there, Wayne felt a strong pull toward the opportunity to acquire this business and turn it around. One thing that Wayne felt a connection to was the store's distinctive logo of a bright yellow half-moon with a rocket ship racing by, accompanied by the words "Half Moon" (the same as the device that was the subject of the trademark registration in paragraph 19(2) below). Wayne had loved that sign ever since he was a boy.
19. On September 28, 2015, Wayne acquired the Half Moon Sports business and its assets in bankruptcy, including the building from which the store had been operated, a warehouse full of miscellaneous sports equipment, the big wooden sign that used to hang above the store entrance (which he decided to hang on his living room wall) and the trademark registrations below. Both registration applications were filed on March 12, 1975, and the trademarks were registered on April 20, 1977. Each of them is in force, according to UIPO records.
  - (1) Utopia Trademark No. 152,651 for the words "Half Moon" registered in relation to "retail store services, namely, sales of sports equipment" in International Class 35.
  - (2) Utopia Trademark No. 152,652 for the following mark:



also registered in relation to “retail store services, namely, sales of sports equipment” in International Class 35.

20. Wayne gave his new business the name “Celestial Sports.” He then began implementing a business plan that would modernize the company. He decided that he would not operate a brick and mortar store; instead he would conduct his retail sales online through a website that would sell all types of sports equipment (including everything from tennis rackets and skis to lacrosse sticks and yoga mats) and athletic clothing, and on which he would also have a Resource Corner, where books and videos on sports could be purchased. Half Moon Sports had never operated an online store.
21. From the new website, he would also offer a suite of mobile apps and other technology-based services that would be useful and engaging to sports enthusiasts of all kinds. Wayne would use the Half Moon Sports building as its business headquarters. Over the door, he hung a glossy new sign that featured the same logo of a bright yellow half-moon with a rocket ship racing by, accompanied by the following text:

## **CELESTIAL SPORTS**

HALF MOON SPORTS—NOW AT YOUR FINGERTIPS

THE UNIVERSE AWAITS!

[www.celestialsports.com](http://www.celestialsports.com)

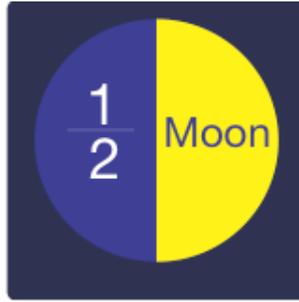
22. On January 4, 2016, after spending many late nights on the logistics of operating this business and programming his first batch of mobile apps, Wayne launched an impressively sleek and user-friendly Celestial Sports website at [www.celestialsports.com](http://www.celestialsports.com). On this site, one could type the name of the sport one was interested in, and it would pull up a page that featured photographs and details about the various equipment and clothing items that would be used for participating in that sport, each of which could then easily be purchased by clicking on the “BUY NOW” button at the bottom of the product listing. For example, when “tennis” was typed in the search box on the home page, the search results showed listings for tennis racquets, tennis balls, tennis clothes, and tennis shoes. When “yoga” was typed in the search box on the home page, the search results showed listings for a variety of yoga mats and yoga blocks and comfortable shirts and pants that could be worn when doing yoga.
23. The website also provided easy access to the Celestial Sports mobile apps, which could be accessed by clicking on an icon bearing the name and logo for the mobile app that appeared on the home page of the website (see below):



24. The first series of mobile apps that Celestial Sports rolled out maintained Wayne’s tradition of incorporating space terms in the names of his products,

including: (1) the Blackhole app, to help golfers track and plan their golf game incorporating environmental factors like wind, rain, and the slope of the course, (2) the Cometride app, to help skiers identify which runs were too icy and which ones had the best snow on any given day based on weather conditions, and (3) ½ Moon (named with a nod to the company’s original name and lunar theme, and the double entendre that “Half Moon” pose was a well-known yoga pose), which was a mobile app to help people locate and sign up for local yoga classes. Not surprisingly, each of these mobile apps promoted the Celestial Sports online store and, once downloaded, they all included a link to the Celestial Sports website where the relevant equipment, attire or educational resources could be purchased.

25. The new company also engaged in an aggressive PR campaign to promote itself and its offerings, including placing full-page advertisements in all of the major sports magazines, including *Sports World*, *Sporting Goods*, *Men’s Sports*, *Women’s Sports*, and *Modern Sports*.
26. By all accounts, the launch of the Celestial Sports online store was a major success, and product orders started pouring in. Unfortunately, the software that operated the Blackhole, Cometride, and ½ Moon mobile apps had a few rollout glitches that resulted in the mobile apps freezing or stalling out in the first few weeks. There were some complaints from some individuals whose attempts to sign up for popular yoga classes were frustrated mid-process and who showed up for the classes they thought they had signed up for only to find out that the mobile app had not fully processed their registration transaction and there was no spot for them. The local media caught wind of these issues: The *Daily Current* ran an article entitled “½ Moon is in the ‘Downward Dog’ House” and *The Post Tribune* ran an article entitled “Yoga Enthusiasts are NOT Over the Moon for ½ Moon.”
27. On January 10, 2016, Celestial Sports filed the following applications with the UIPO:
  - (1) Utopia Trademark Application No. 55/146,250 for the following mark:



in relation to a “downloadable mobile application for locating, and registering for, yoga classes” in International Class 9 and “online retail store services, namely, online sales of athletic equipment, clothing, books and videos” in International Class 35.

- (2) Utopia Trademark Application No. 55/146,258 for the words “½ Moon” also in relation to “downloadable mobile application for locating, and registering for, yoga classes” in International Class 9 and “online retail store services, namely, online sales of athletic equipment, clothing, books and videos” in International Class 35.

28. The applications to register the above marks were examined by the UIPO and published for opposition. The McAndrews sisters had recently heard about the ½ Moon mobile app from a number of their loyal clients (some of whom urged Half Moon Yoga to set up a competing mobile app and others of whom grumbled that the name “½ Moon” was so similar that it had to have been chosen with the intent of taking advantage of the goodwill of Half Moon Yoga) and had become increasingly unhappy about the situation. Thus, when they learned about the pending applications to register the ½ MOON marks, they decided to take a stand.
29. Though Half Moon Yoga had eagerly agreed to sell its books and videos through the original Half Moon Sports store and then through the Celestial Sports online store, and the sales had been very good, Half Moon Yoga began to fear that its yoga clients would think it was affiliated with ½ Moon, or mistakenly believe that Half Moon Yoga was sponsored or endorsed by ½ Moon. Half Moon Yoga promptly sent a letter to Celestial Sports demanding that it withdraw the applications and cease all use of the ½ MOON marks. Not receiving a response to this letter by the opposition deadline, Half Moon Yoga filed oppositions against

both applications based on its prior use and registrations of the word and device marks in paragraph 12 above.

30. Upon receipt of the notices of opposition, Celestial Sports finally sent a response to the letter from Half Moon Sports, denying that there was any likelihood of confusion, because the marks were not sufficiently similar, the products and services were different, and it owned the goodwill and rights from its predecessor's use of the HALF MOON SPORTS mark, which gave it the right to use the mark ½ MOON.
31. Though Wayne admitted to having attended a Yoga for Runners clinic at Half Moon Yoga back in 2005, he denied that he had any intention of trading on the goodwill associated with Half Moon Yoga's marks. He argued that the Half Moon pose is a popular yoga pose, that HALF MOON YOGA is a descriptive mark, and that therefore the McAndrews' ability to prevent others from using "HALF MOON" or "1/2 MOON" in connection with yoga products/services should be very limited. Celestial Sports declined to refrain from using the ½ MOON word and device marks and refused to withdraw its applications to register these marks with the UIPO. Half Moon Yoga then issued and served a claim of trademark infringement and an application for a preliminary injunction in the Court of Utopia. The opposition proceedings at the UIPO were suspended by consent.
32. The Court held a hearing at which both parties were present and represented, and at which all the above facts were introduced as evidence.

### **The Court's findings**

33. The Claimant contends that the Defendant's use of the signs ½ MOON and the device in paragraph 19(2) above constitute infringement of each of the three trademark registrations in paragraph 12 above under Section 100(2) of the Utopian Trademark Act 1990 ("UTMA").
34. Section 100 of the UTMA states as follows (insofar as is relevant to this claim):
  - (2) A person infringes a registered trademark if he uses in the course of trade a sign where because—

(a) the sign is identical with the trademark and is used in relation to goods or services similar to those for which the trademark is registered, or

(b) the sign is similar to the trademark and is used in relation to goods or services identical with or similar to those for which the trademark is registered,

there exists a likelihood of confusion on the part of the public, which includes the likelihood of association with the trademark.

(3) For the purposes of this section a person uses a sign if, in particular, he—

(a) affixes it to goods or the packaging thereof;

(b) offers or exposes goods for sale, puts them on the market or stocks them for those purposes under the sign, or offers or supplies services under the sign;

(c) imports or exports goods under the sign; or

(d) uses the sign on business papers or in advertising.

35. Section 101 of the UTMA states as follows:

A registered trademark is not infringed by the use in the course of trade of an earlier right.

For this purpose an “earlier right” means a registered or unregistered trademark or other sign continuously used in relation to goods or services by a person, or its predecessor in title, from a date prior to whichever is the earlier of—

(a) the use of the first-mentioned trademark in relation to those goods or services by the proprietor, or its predecessor in title, or

(b) the registration of the first-mentioned trademark in respect of those goods or services in the name of the proprietor, or its predecessor in title.

36. When evaluating whether there is a likelihood of confusion on the part of the public for the purposes of the assessment under Section 100(2), a court must take into account all the circumstances of the case. In this case, the Court considers that the following factors are particularly relevant:

(a) Comparison of marks. While they have some visual differences, particularly in the case of the device marks, the parties’ marks are aurally

and conceptually very similar. Accordingly, overall, the respective marks are similar to a relatively high degree.

- (b) Comparison of goods and services. The Claimant's registrations cover yoga instruction services and shirts and pants for yoga, whereas the Defendant has used its signs in relation to a downloadable app that allows consumers to locate, and register for, local yoga classes; also, the Defendant's online store sells equipment used for yoga, including yoga mats and yoga blocks. The Court finds that the respective goods and services are similar to a moderate degree.
  - (c) Distinctiveness of the Claimant's marks. The Claimant's marks are derived from the name of a common yoga pose. Through their use over time in connection with the Claimant's successful yoga studio the marks have acquired distinctiveness; nonetheless, "Half Moon pose" remains a widely known common term in the yoga world. The Claimant's marks are therefore weakly distinctive.
  - (d) Other factors affecting the likelihood of confusion. The Defendant's use of the ½ MOON mark was derived from his company's original name, which was used for many years in connection with the sale of sporting goods. Consumers would therefore be accustomed to some degree to seeing the ½ MOON mark used by a party other than the Claimant in relation to the sale of sporting goods and would therefore be less likely to make an association with the Claimant's marks.
37. Taking each of the above factors into account, the Court finds that there is a likelihood of confusion on the part of the public.
38. The Defendant's defense under Section 101 is likely to fail because the goods and services in relation to which the Defendant has used the ½ MOON marks are not the same as those in relation to which the Defendant's marks were used by Half Moon Sports.

39. The Court therefore finds that the Claimant is more likely than not to succeed on the merits in its claim of trademark infringement.
40. There is ample reason to believe in this instance that any confusion that occurs will result in irreparable harm to the Claimant. The Claimant has used its marks in commerce for almost twenty years and, over that time, has achieved great success and built up considerable goodwill in connection with its innovative and high-quality yoga instruction services. The use of the Defendant's marks in connection with locating and registering for yoga classes is likely to lead to confusion among consumers about the relationship between the parties and their offerings and, in this case, where there were serious questions about the quality of the Defendant's mobile app as a result of the initial-rollout technology problems with the service, the Claimant's reputation and the goodwill associated with its marks are negatively affected. This reputational damage cannot be remedied by the payment of monetary damages.

### **Conclusion**

41. This Court therefore grants the Claimant's application and orders that until after final judgment in this claim, or until further order, the Defendant must not use in the course of trade the ½ MOON word and device marks in relation to any of the following goods and services:
  - (a) downloadable mobile application for locating, and registering for, yoga classes;
  - (b) online retail store services, namely, online sales of athletic equipment, clothing, books, and videos limited to those related to yoga.

Application for permission to appeal

Mr. Justice More granted Celestial Sports leave to appeal to the Court of Appeal of Utopia. Permission to appeal is limited to the following three grounds:

1. The Court was wrong to find that there was a likelihood of confusion under Section 100(2) of the Utopian Trademark Act 1990.
2. The Court was wrong to find that the defense under Section 101 of the Utopian Trademark Act 1990 was likely to fail.
3. The Court was wrong to find that the Claimant was likely to suffer irreparable harm in the absence of an injunction.