

2023 LeClair x uOttawa Moot Problem



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Problem background

Jane Laces is the new store owner of Kickz Collectible (“Kickz”) in Downtown Ottawa. Jane goes to a tradeshow and comes across a high-end sneaker collector named Lebron Jordans. Lebron has incorporated in Ontario and has a popular YouTube channel which promotes the fact that he can find vintage and hard-to-find sneakers. The most popular video on his YouTube channel is titled “How to Spot Fakes”. It has amassed an incredible 35 million views.

Jane has watched Lebron’s videos and is impressed when she met the popular vlogger at the trade show. Kickz needs inventory for their big launch and provides a list of ten rare collectible sneakers for Lebron to source. They sign an agreement that states:

Best efforts will be made to authenticate the sneakers. Authentication does not consider where a sneaker is manufactured but ensures that the sneaker is an original from the manufacturer. If it is determined that the authenticated sneaker is fake, then the buyer is entitled to a full refund.

Jane provides Lebron with an initial deposit, and the remainder is due 15 days after delivery of the sneakers.

Lebron procures the sneakers from multiple sources. According to the seller and to Jane’s knowledge, the sneakers were authenticated (see Exhibit 1). The sneakers were delivered on November 10, 2022.

Kickz has a successful launch and garners ample social media buzz and media attention. The sneakers sell out! However, two days later, a customer comes back to the store and claims that the sneakers they purchased were fake. The owner is in shock and immediately reaches out to Lebron (see Exhibit 2). Lebron replies, stating that this is impossible and that his top verifier inspected the sneaker (see Exhibit 3). Jane replies, stating that she was under the impression that Lebron himself would have verified each sneaker (see Exhibit 4).

A few days later, another sneaker is returned, but this time the purchaser also posts a tweet (see Exhibit 5). The tweet and subsequent posts go viral. It states that Kickz sells fakes, the hashtag #KickzFraud starts trending, and the story is even picked up by national media. Now everyone is boycotting the store.

Jane is upset and reaches out to Lebron, informing him that another pair of fake sneakers were sold. Lebron responds by stating that the sneakers have been authenticated and that they are not fake. Jane goes to a sneaker appraiser to have the sneakers re-examined. The appraiser advises Jane that the sneakers are authentic but they were not manufactured in the USA, and therefore, there are some slight differences and the sneakers are not considered as collectible. Jane sends the findings to Lebron to which Lebron responds saying that they are authentic and this does not violate their agreement (see Exhibit 6).

It is now November 25th and the 15 days have passed. Lebron sends Jane an email reminding her that the remainder of the payment is now due. Jane refuses to pay, asks for a full refund and demands that they be compensated for damages. Lebron refuses and says “we had a deal that I have fulfilled” and attaches the agreement (see Exhibit 7). After 30 days of non-payment, Lebron’s lawyer files a statement of claim asking for the remainder of the payment, interest and legal costs. Jane is outraged and files a statement of defence and a counterclaim stating that they are entitled to a full refund, legal costs and damages.

Exhibit 1 – Email from Lebron to Jane on authenticity guarantee.

From: Lebron Jordans
Sent: Tuesday, November 8, 2023 7:23:24 PM
To: Jane Laces
Subject: Re: Sneakers Sourced

Dear Lebron,

Thank you for sourcing these sneakers for us and providing us with authentication certificates!

I am thrilled you have a thorough authentication process. I am sure our customers will enjoy these authentic, collectible sneakers.

Thank you for your kind wishes.

Jane Laces

From: Lebron Jordans
Sent: Tuesday, November 8, 2023 5:28:37 PM
To: Jane Laces
Subject: Sneakers Sourced

Dear Jane,

We have sourced and inspected the sneakers you ordered. I can confirm that all ten pairs of sneakers are authentic. Please see attached the authenticity certificates.

We would like to take a moment to reassure you about the authenticity of our products. We understand that purchasing sneakers of this nature can be a daunting experience, and you want to be sure you are receiving the genuine product that you paid for.

Lebron Jordan takes pride in providing customers with the best quality products. We go the extra mile to ensure our sneakers are authentic – no fakes and no frauds. Our products also go through a rigorous quality check process before shipping to ensure they meet our standards. We meticulously inspect all the sneakers we source to ensure you are getting the best of the best. We verify the box, sizing labels, soles, stitching, logos, heel tabs, laces and everything in between.

Per our agreement, in the unlikely event that you receive a product that is not authentic, we offer a hassle-free return and refund policy. You can contact us directly, and we will take the necessary steps to ensure you receive a genuine product.

We wish you success with your grand opening and hope your customers enjoy these rare, authentic sneakers!

Regards,

Lebron Jordans

Exhibit 2- Email from Jane to Lebron on a customer return.

From: Jane Laces

Sent: Tuesday, November 14, 2023 5:18:47 PM

To: Lebron Jordans

Subject: Customer Complaint- Fake sneakers

Dear Lebron,

I am writing this email with immense disappointment and anger regarding the sneakers you sourced and authenticated for us. A customer came into the store today to return a pair because the sneakers were fake! It is highly unacceptable and unprofessional of your company to provide us with a fake product considering your promises of a thorough authentication process.

We placed an order with you for authentic, collectible sneakers, expecting to receive the genuine product as per our agreement. However, this return has caused us significant damage and raises questions about the authenticity of the other sneakers we have already sold. I have had to allow the customer to return the sneakers, leading to the loss of our reputation and financial loss.

It is disheartening to see that your company has no regard for ethical business practices and is willing to engage in such distasteful activities to make a profit. In addition to your authenticity guarantee, we trusted your company and relied on your products to serve our customers with the best quality products. However, your company's unethical behaviour has let us down.

As per our agreement, we would like an immediate refund of our payment for this particular pair of sneakers.

Sincerely,

Jane Laces.

Exhibit 3- Response from Lebron to Jane on authenticity of the sneaker.

From: Lebron Jordans
Sent: Tuesday, November 14, 2023 5:48:36 PM
To: Jane Laces
Subject: Re: Customer Complaint- Fake sneakers

Dear Jane,

Thank you for taking the time to bring your concern to our attention. We are sorry to hear that your customer returned the sneakers. We would like to reassure you that we take the authenticity of our sneakers very seriously. It is impossible that our sneakers are fake and I strongly believe your customer is mistaken. Our top authenticator was in charge of your order and verified that each sneaker was authentic.

As mentioned before, we have implemented a strict authentication process to ensure that our customers receive only genuine products and all our products go through a rigorous quality check process before being shipped to our customers.

Since our authenticator has determined that the sneaker is, in fact, authentic, when we first sourced the sneakers, we are unable to provide you with a refund.

Sincerely,

Lebron Jordans

Exhibit 4- Jane response to Lebron with concern about authentication process.

From: Jane Laces

Sent: Tuesday, November 14, 2023 5:48:36 PM

To: Lebron Jordans

Subject: Re: Customer Complaint- Fake sneakers

Lebron,

I am extremely disappointed with how your company is handling this situation. I request that you take this allegation seriously, as it may affect mine and your business!

From our previous correspondence, it was implied that you conducted the verification of authenticity for the sneakers. I am disappointed and frankly upset that you are now informing me another authenticator was in charge of my order. This process is making me lose confidence in your products and process.

Sincerely,

Jane Laces.

Exhibit 5- Screenshot of viral Tweet.



Exhibit 6- Email thread upon discovering sneaker is a non-collectible.

From: Lebron Jordans
Sent: Monday, November 21, 2023 5:28:37 PM
To: Jane Laces
Subject: Re: Fwd: Re: Sneaker verification

Hi Jane,

I am really sorry you are going through this. However, our agreement, which I have attached, was for us to provide authentic sneakers which we did. You did not specify any other requirements. They are authentic and this does not violate their agreement.

On a side note, your final payment is due soon so please make arrangements for payment.

Thanks,

Lebron Jordans

From: J Laces
Sent: Monday, November 21, 2023 2:18:09 PM
To: Lebron Jordans
Subject: Fwd: Re: Sneaker verification

Hi Lebron,

As you may have heard by now, social media is claiming that I sell fake sneakers. My store is being boycotted and I keep getting media inquiries. The sneakers you sold me are not rare and collectible (see thread below). Please return my money as this was not the spirit of our agreement.

I am really devastated that you would do this to me.

Jane Laces

From: C Taylor
Sent: Monday, November 21, 2023 12:14:15 PM
To: J Laces
Subject: Re: Sneaker verification

Hi Jane,

I have examined the sneakers. This is a complex situation as the sneakers are authentic but not collectible. Allow me to explain. The sneaker is from the manufacturer but it is not fully made in the US, only parts of the sneaker is made in their US facility. Hence, they are worthless to a collector. I would think that Jordans should have known that when he sold it to you.

I hope that helps.

C Taylor

From: J Laces

Sent: Monday, November 21, 2023 10:13:05 AM

To: Chuck Taylor

Subject: Sneaker verification

Hi Chuck, I have sent over a pair of sneakers for you to verify the authenticity. I purchased them from Lebron Jordans who authenticated them, well Sneaker Legend tweeted out they are fake and the tweet has over 5M likes, my phone wont stop ringing and everyone thinks I am running a scam. Please help!

JL

Exhibit 7- Agreement

This Sales Contract ("Contract") is made and entered into on October 1st, 2022 by and between Lebron Jordans ("Seller") and Kickz Collectible ("Buyer").

1. **SALE OF GOODS.** The Seller hereby agrees to sell and the Buyer hereby agrees to purchase the following goods ("Goods"): Authentic and rare sneakers (list of sneakers attached in the Schedule "A" for the price of \$100,000 in Canadian dollars.
2. **TITLE.** The Seller hereby warrants and represents that they are the rightful owner of the Goods and that the Goods are free and clear of all liens and encumbrances. Upon payment of the purchase price by the Buyer, title to the Goods shall pass from the Seller to the Buyer.
3. **PRICE AND PAYMENT.** The purchase price for the Goods shall be \$100,000 in Canadian dollars. The Buyer shall make a deposit of \$50,000 and the remainder of the payment 15 days after delivery of the sneakers.
4. **DELIVERY.** The Buyer shall be responsible for any shipping or transportation costs associated with the delivery of the Goods.
5. **WARRANTIES.** The Seller makes no warranties or representations, express or implied, with respect to the Goods, including, but not limited to, any warranties of merchantability or fitness for a particular purpose. The Buyer acknowledges that the Goods are sold "as is" and "where is" and assumes all risks associated with the purchase of the Goods. Best efforts will be made to authenticate the sneakers. Authentication does not consider where a sneaker is manufactured but ensures that the sneaker is an original from the manufacturer. If it is determined that the authenticated sneaker is fake, then the buyer is entitled to a full refund.
6. **INDEMNIFICATION.** The Buyer hereby agrees to indemnify and hold harmless the Seller, its officers, directors, employees, agents, and affiliates from and against any and all claims, damages, liabilities, costs, and expenses, including reasonable attorneys' fees, arising from or related to the Buyer's purchase or use of the Goods.
7. **GOVERNING LAW.** This Contract shall be governed by and construed in accordance with the laws of the province of Ontario.
8. **ENTIRE AGREEMENT.** This Contract constitutes the entire agreement between the parties with respect to the purchase and sale of the Goods and supersedes all prior negotiations, understandings, and agreements between the parties.
9. **AMENDMENTS.** This Contract may not be amended or modified except in writing signed by both the Seller and the Buyer.
10. **ASSIGNMENT.** The Buyer may not assign or transfer its rights or obligations under this Contract without the prior written consent of the Seller.

11. COUNTERPARTS. This Contract may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have executed this Contract as of the date first written above.

SELLER Signature : Lebron Jordans

BUYER Signature : Jane Laces on behalf of Kickz Collectible

Schedule "A"

List of agreed upon sneakers to purchase:

1. Air Jordan 1 Low Game Royal
2. Nike Air Mag
3. Adidas NMD_R1 Friends and Family
4. Air Jordan 4 Retro Eminem Encore
5. Nike Dunk SB Low Paris
6. Adidas Yeezy Boost 75- OG Light Brown
7. Nike Air Jordan 1 Retro High Dave White
8. Converse Chuck Taylor All Star Hi DC Comics "The Joker"
9. Puma Disc Blaze Lite « Coat of Arms"
10. Air Jordan 3 Retro DJ Khaled Grateful

FAUTEUX HALL ARBITRATION CENTRE

B E T W E E N:

Lebron Jordans

Claimant

- and -

Kickz Collectible

Respondent

AFFIDAVIT OF DR. STEPHANIE CURRY

The Plaintiff, Kickz Collectible relies upon Dr Stephanie Curry's statement.

Further to the Court's direction, the Plaintiff submits the following statement with respect to Dr. Stephanie Curry:

Dr. Stephanie Curry

It is anticipated that Dr. Curry will provide the Tribunal with the following testimony:

- a) Sneakers is more than footwear, in recent years, the sneaker culture has become mainstream. They have transformed into a fashion statement and as collector items, with some sneakers being sold for tens of thousands of dollars.
- b) Collectible and authentic sneakers are two popular yet distinct categories that have emerged in the sneaker market.
- c) Collectible sneakers are usually limited edition or rare models that are highly sought after by sneaker fans. These sneakers are usually tied with a particular event or celebrity, which adds to their value.
- d) The price of collectible sneakers can vary widely depending on several factors such as the model, rarity, and demand. Even within the same collection, some sneakers may have slight differences as they are made by hand and not machine.
- e) These collectible sneakers can sell for significant money and there are secondary sneaker markets which can inflate the price.
- f) In contrast, authentic sneakers are manufactured by the brand and are not necessarily collectible. Sneakers can be authenticated by matching them with the sneaker specifications provided.
- g) Sneakers are mass-produced and widely available in retail stores. Unless they are a limited run. Authentic sneakers are not necessarily associated with any particular event, sports figure or celebrity.
- h) The price of collectible sneakers is usually higher than ones that are not collectible. An authenticator ought to know the difference between a collectible sneaker and a non-collectible sneaker. However, it could be difficult to distinguish if the sneaker is found to be authentic.

The Law

Given the focus of the Moot is oral advocacy and showcasing trials in the Metaverse, we ask that both parties present arguments only on the materials provided above and rely solely on the *Sale of Goods Act*, R.S.O. 1990, c. S.1 and general contract formation principles.

Specific sections highlighted for reference:

Contract, how made

4 Subject to this Act and any statute in that behalf, a contract of sale may be made in writing, either with or without seal, or by word of mouth or partly in writing and partly by word of mouth, or may be implied from the conduct of the parties, but nothing in this section affects the law relating to corporations.

Stipulation which may be condition or warranty

12(2) Whether a stipulation in a contract of sale is a condition the breach of which may give rise to a right to treat the contract as repudiated or a warranty the breach of which may give rise to a claim for damages but not to a right to reject the goods and treat the contract as repudiated depends in each case on the construction of the contract, and a stipulation may be a condition, though called a warranty in the contract.

Implied conditions as to quality or fitness

15 Subject to this Act and any statute in that behalf, there is no implied warranty or condition as to the quality or fitness for any particular purpose of goods supplied under a contract of sale, except as follows:

1. Where the buyer, expressly or by implication, makes known to the seller the particular purpose for which the goods are required so as to show that the buyer relies on the seller's skill or judgment, and the goods are of a description that it is in the course of the seller's business to supply (whether the seller is the manufacturer or not), there is an implied condition that the goods will be reasonably fit for such purpose, but in the case of a contract for the sale of a specified article under its patent or other trade name there is no implied condition as to its fitness for any particular purpose.
2. Where goods are bought by description from a seller who deals in goods of that description (whether the seller is the manufacturer or not), there is an implied condition that the goods will be of merchantable quality, but if the buyer has examined the goods, there is no implied condition as regards defects that such examination ought to have revealed.
3. An implied warranty or condition as to quality or fitness for a particular purpose may be annexed by the usage of trade.

4. An express warranty or condition does not negative a warranty or condition implied by this Act unless inconsistent therewith. R.S.O. 1990, c. S.1, s. 15.

Duties of seller and buyer

26 It is the duty of the seller to deliver the goods and of the buyer to accept and pay for them in accordance with the terms of the contract of sale. R.S.O. 1990, c. S.1, s. 26.

Seller may maintain action for price

47 (1) Where, under a contract of sale, the property in the goods has passed to the buyer and the buyer wrongfully neglects or refuses to pay for the goods according to the terms of the contract, the seller may maintain an action against the buyer for the price of the goods.

FAUTEUX HALL ARBITRATION CENTRE

B E T W E E N:

Lebron Jordans

Claimant

- and -

Kickz Collectible

Respondent

PROCEDURAL ORDER NO. 1

1. This is a dispute between Lebron Jordans as Claimant and Kickz Collectible as Respondent. They shall be referred to in this Procedural Order as Lebron and Kickz.
2. On 16 January 2023, the judges conferred by means of a conference call as to the procedure that should be followed during the hearing.
3. On 18 January 2023, the Presiding Judge held a conference call with Mr. Vince Karter, counsel for the Claimant, and Ms. Jackie Young, counsel for the Respondent.
4. Ms. Young confirmed that the FHAC has jurisdiction to hear the dispute.

5. Both counsels were reminded that the purpose of the conference call was to establish the procedure, and in particular the time schedule, that would be followed and not to discuss the merits of any of the issues.
6. It was noted that no further facts could be introduced beyond the current document.
7. It was also agreed that no written submissions were necessary. Only oral ones.
8. Thus, oral arguments are scheduled for 21 March 2023, and the final on 25 March 2023. Each team of two will have a maximum of 20 minutes, inclusive of questions from judges, to present arguments. Ideally, each speaker will only use 10 minutes thereby evenly dividing the 20 minutes.
9. The Parties agree that their oral submission would address:
 - a. Whether an agreement was formed;
 - b. If an agreement was formed, whether LeBron Jordans met the requirements of the agreement; and
 - c. Whether there were any implied conditions, and if yes, whether those implied conditions were met.