

Federal Court



Cour fédérale

Date: 20101209

Docket: T-1938-10

Citation: 2010 FC 1267

Toronto, Ontario, December 9, 2010

PRESENT: The Honourable Mr. Justice Lemieux

BETWEEN:

PREMIUM SPORTS BROADCASTING INC.

Plaintiff

and

**598096 ONTARIO LIMITED, CARRYING ON
BUSINESS AS STUDIO 10 AND ANDRE
TRAHAN, HEMATIE GOWKARRAN, (ALSO
KNOWN AS MEMATIE S. GOWKARRAN,
ALSO KNOWN AS SHIRLEY
GOWKARRAN), CARRYING ON BUSINESS
AS D'PAVILION SPORTS BAR / D'PAVILION
RESTAURANT & LOUNGE,
2037939 ONTARIO LIMITED, CARRYING
ON BUSINESS AS KEYSTORM PUB
AND DANIEL J. THOMPSON, GVANDE
LIMITED, CARRYING ON BUSINESS AS
SERVICE GRILL & SIDETRACK LOUNGE
AND GREGORY VANDETTE, ORIGINAL'S
SPAGHETTI WESTERN LTD., CARRYING
ON BUSINESS AS ORIGINAL'S, NADA
MORRA AND TONY MORRA,
1682211 ONTARIO INC., CARRYING ON
BUSINESS AS THE SPORTS CAFE
CHAMPION AND KOSTA GRIGORIADIS,
WALDEMAR BABIS, CARRYING ON
BUSINESS AS DOMENIC PUB**

**Defendants
(Ontario)**

and

**9000-0696 QUEBEC INC., 2168-8700 QUEBEC
INC., 2425-2058 QUEBEC INC., CARRYING
ON BUSINESS AS BAR CHEZ GEORGE/PUB
HARAIKI AND ALSO CARRYING ON
BUSINESS AS BAR CHEZ GEORGES/PUB
HARAIKI AND GEORGE(S) TRITSIS**

**Defendants
(Quebec)**

and

**1473395 ALBERTA LTD., CARRYING ON
BUSINESS AS HAT TRICKS RESTAURANT
& LOUNGE, JASON FOREMAN AND BIYU
LIANG**

**Defendants
(Alberta)**

and

**0697655 B.C. LTD., CARRYING ON
BUSINESS AS ROCKING HORSE PUB AND
DAVID WILLOUGHBY, MAXX'S FITNESS
LTD., CARRYING ON BUSINESS AS
MAXIMUM FITNESS SPORTS LOUNGE,
GREGG PEARSON AND KEVIN DENNIS
FRANK HALL**

**Defendants
(British
Columbia)**

REASONS FOR ORDER AND ORDER

I. Background

[1] On December 6th, 2010 Premium Sports Broadcasting, (Premium) moved the Court for an interlocutory injunction in support of an action filed on November 24, 2010 against a number of Sports Bars in Ontario (7), Quebec (2) and British Columbia (2).

[2] The defendant 1682211 Ontario Inc. (The Sports Café Champion) and its controlling mind Kosta Grigoriadis operating a Sports Bar in Toronto were named defendants in the action. Premium

initiated similar actions in Court Files T-1935 and T-1939 in which the defendants were also Sports Bars. Interlocutory relief in those cases was also sought by Premium in this Court on December 6, 2010.

[3] In its November 24 action, Premium claims the defendants infringed the *Copyright Act* and the *Radiocommunication Act* by publicly showing, exhibiting or performing sports events licensed to or by Premium. The particular focus, albeit not the only ones, are sports events described as matches and events emanating from Ultimate Fighting Championship (UFC) events distributed by broadcasting undertakings to both satellite and cable pay-per-view subscribers. In particular it is asserted by Premium that UFC is the premium provider of Mixed Martial Arts (MMA) events in North America and that MMA is currently one of the fastest growing sports in North America.

[4] In its action, Premium claimed the defendant Sports Bars are commercial establishments in Canada which could only exhibit each live UFC sports event distributed via PPV if it obtained the authority to exhibit the particular event from Canadastar as agents of Premium and Zuffa LLC (Zuffa) the owner of UFC with whom Premium entered into an agreement pursuant to which Zuffa assigned to Premium its copyright to each live event.

[5] In particular, in its action against the defendant The Sports Café Champion (SCC) Premium alleges, based on the affidavit of Tim Jackson who investigated the Sports Bar on May 29th, 2010, that this business exhibited UFC 114 on May 29, 2010 to at least 35 patrons in attendance to watch the exhibition. Premium alleged this establishment was not authorized to exhibit UFC 114 or any other UFC pay-per-view events.

[6] In his affidavit in support of Premium's interlocutory motion Rod Keary, an officer and director of Premium, stated he believed the SCC was using either an illegal or illegally-modified satellite system to gain access to the UFC 114 event. It was his belief that the SCC has exhibited other UFC pay-per-view events in the same manner, without authorisation.

[7] In his affidavit, Mr. Keary states that on June 1st, 2010 he sent a letter to the SCC informing it of the results of Mr. Jackson's investigation and invited it to contact him in an effort to resolve the matter. He sent a follow-up letter on June 18th, 2010. Essentially that letter puts the SCC on notice that its conduct is unlawful unless authorized by Canadastar. Mr. Keary deposed that it was his belief that, unless the requested injunction is granted against the SCC, it will continue to show other UFC pay-per-view events including the upcoming UFC 124 scheduled to be broadcast on December 11, 2010 from Montreal (my emphasis) as well as any other Premium proprietary event that may be of interest to the SCC to which they are able to gain access using their illegal or unauthorized receiving equipment.

[8] In his affidavit Mr. Keary deposed to the issue of Balance of Convenience/Irreparable Harm/Damages. I summarize the substance of his affidavit on this point:

- a. The need for an interlocutory injunction in the context of the number of UFC events, the vast number of commercial establishments and the ease of illegal access to UFC PPV events through unauthorized receiving equipment.
- b. The fact that Premium needs to preserve the integrity of its licensing system related to the piracy of UFC PPV events and the duty owed to its customers who have expressed concerns about illegal exhibition by their competitors which, in some instances has led customers to warn Premium they will not purchase future UFC events unless Premium stops unauthorized exhibitions and protects the integrity of its

licensing system. This will lead to lost sales opportunities and lost existing market share.

- c. Unauthorized and illegal access to UFC events infringes upon and creates confusion with Premium's Trade-marks related to the UFC trade name.
- d. Continued ability by the defendants to intercept and decode live transmission of UFC PPV events contrary to the provisions of the *Radiocommunication Act*, if not enjoined, Premium has and will continue to suffer irreparable harm.

II. The hearing of the motion

[9] At the return of Premium's motion for an interlocutory injunction, Counsel for SCC entered an appearance and filed a responding motion record with authorities. He argued Premium:

- i. Failed to establish irreparable harm;
- ii. It delayed seeking relief;
- iii. It has failed to establish it is entitled to relief in the nature of an Anton Piller Order; and
- iv. It has not provided sufficient information concerning the undertaking for damage.

[10] SCC's arguments must be appreciated in the following context:

- i. It has yet to file a statement of defence to the underlying action;
- ii. It did not file a responding affidavit denying any of the allegations contained in Mr. Keary's affidavit and in particular his allegation that SCC had unlawfully exhibited UFC events in the past and intended to do so in the future; and
- iii. Did not move the Court for the right to cross examine Mr. Keary on his affidavit.

[11] In short, the only evidence I have before me is Premium's unchallenged evidence particularly on irreparable harm and balance of convenience. I have no evidence on the other side except unsupported submissions by Counsel for SCC. I do not accept his submission that:

- i. Premium has delayed relief; it tried to settle the matter;

- ii. Mr. Keary's affidavit speaks to irreparable harm and was not cross-examined;
- iii. Premium did not seek relief in the nature of an Anton Piller Order; and
- iv. Mr. Keary undertook in his affidavit to abide by any Court order on damages.

[12] For the reasons set out in Premium's written representations, I am satisfied that the Plaintiff has raised a serious issue to be tried, has established irreparable harm and the balance of convenience favours it.

[13] The hearing of Premium's motion was overshadowed by one fact and that is the UFC event to take place in Montreal on Saturday December 11th, 2010 which will be carried on satellite and cable to Premium's PPV customers. I was told that this event is to be a "blockbuster" attraction with the potential of breaking records.

[14] I asked Counsel for SCC whether his client intended to show this event without authorisation. There was no answer. I encouraged the parties to resolve the matter. I was informed yesterday that discussions had been held but, the matter could not be resolved.

ORDER

THIS COURT ORDERS that:

1. An interlocutory injunction be and is hereby granted, until trial or further order of this Court, against 1682211 ONTARIO INC., carrying on business as THE SPORTS CAFÉ CHAMPION and KOSTA GRIGORIADIS restraining each of them, their officers, directors, employees, agents, assigns, servants, or any person acting under their instructions, or any persons having knowledge of this order or any of its terms from publicly showing, exhibiting, performing or from decoding, decrypting, or downloading via the Internet, any broadcasts, telecasts or signal feed, regardless of the source of broadcast or signal feed, without the written authorization and consent of the plaintiff, any of the following events:
 - (a) All Ultimate Fighting Championship (UFC) pay-per-view (PPV) matches and events broadcast in Canada from today's date up to and including December 31, 2011;
 - (b) All matches and events broadcast exclusively by Premium in Canada via the Setanta Sports Channel.

2. The issuance of this Order is premised upon the plaintiff's undertaking to abide by any order concerning damages that the Court may make if it ultimately appears that the granting of the injunction herein has caused damage to the defendant.

“François Lemieux”

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: T-1938-10

STYLE OF CAUSE: PREMIUM SPORTS BROADCASTING INC. v.
1682211 ONTARIO INC. CARRYING ON BUSINESS
AS THE SPORTS CAFÉ CHAMPION AND KOSTA
GRIGORIADIS

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: December 6, 2010

**REASONS FOR ORDER
AND ORDER BY:** LEMIEUX J.

DATED: December 9, 2010

APPEARANCES:

Kevin Fisher FOR THE PLAINTIFF

Kevin D. Toyne FOR THE DEFENDANTS (The Sports Café
Champion / Kosta Grigoriadis)

SOLICITORS OF RECORD:

BASMAN, SMITH LLP FOR THE PLAINTIFF
Toronto, Ontario

BRAUTI, THORNING, ZIBARRAS FOR THE DEFENDANTS (The Sports Café
LLP Champion / Kosta Grigoriadis)
Toronto, Ontario