



Court File No T-1486-19

FEDERAL COURT OF CANADA

ALLARCO ENTERTAINMENT 2008 INC.

Plaintiff

and

STAPLES CANADA ULC, STAPLES CANADA INC., STAPLES CANADA HOLDINGS, LLC, STAPLES CANADA HOLDINGS III, LLC, STAPLES PROMOTIONAL PRODUCTS CANADA, LTD. , BEST BUY CANADA LTD. , BEST BUY MEDICAL SUPPLIES (CANADA) INC., BEST BUY MATTRESS COUNTRY CANADA LTD., LONDON DRUGS LIMITED , CANADA COMPUTERS INC., JOHN DOE CUSTOMERS 1 TO 50,000

Defendants

STATEMENT OF CLAIM TO THE DEFENDANTS

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or a solicitor acting for you are required to prepare a statement of defence in Form 171B prescribed by the Federal Courts Rules serve it on the plaintiff's solicitor or, where the plaintiff does not have a solicitor, serve it on the plaintiff, and file it, with proof of service, at a local office of this Court, WITHIN 30 DAYS after this statement of claim is served on you, if you are served within Canada.

If you are served in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period for serving and filing your statement of defence is sixty days.

Copies of the Federal Court Rules information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO DEFEND THIS PROCEEDING, judgment may be given against you in your absence and without further notice to you.

September 11, 2019

Issued by: (Registry Officer)

Address of local office: Suite 200 180 Queen Street West 180, rue Queen Ouest bureau 200 Toronto, Ontario Toronto, Ontario M5V 3L6 M5V 3L6

TO: STAPLES CANADA ULC,

666 Burrard Street
Park Place
Suite 1700
Vancouver BC
V6C 2X8

And to: STAPLES CANADA INC., STAPLES CANADA HOLDINGS, INC, STAPLES
CANADA HOLDINGS III, INC.,

6 Staples Avenue
Richmond Hill, ON
L4B 4W3

And to: STAPLES PROMOTIONAL PRODUCTS CANADA LTD.

77 King Street West
Toronto Dominion Centre
Suite 400
Toronto, Ontario
M5K 0A1

And to: BEST BUY CANADA LTD. , , BEST BUY MATTRESS COUNTRY CANADA
LTD.,

1200 Waterfront Centre
200 Burrard Street
Vancouver BC
V6C 3L6

And To: BEST BUY MEDICAL SUPPLIES (CANADA) INC.

507 Main Street
Shediac
NB
E4P 2C4

And To: LONDON DRUGS LIMITED ,

12251 Horseshoe Way
Richmond, BC
V7A 4X5

C/O
Bull Housser & Tupper LLP

510 West Georgia Street
Vancouver BC
V6B 0M3

And To: CANADA COMPUTERS INC.,

75 West Wilmot St.
Richmond Hill, Ontario
L4B 0B7

STATEMENT OF CLAIM

1. The Plaintiff claim:

- (a) an interim, interlocutory, and permanent injunction prohibiting, enjoining and restraining the Defendants, by themselves or by their shareholders, directors, officers, employees, representative and agents, or by any company, partnership, trust, entity or person under their authority or control, or with which they are associated, or anyone on their behalf from directly or indirectly:
- i) communicating or facilitating the communication of the Plaintiff's Works to the public by telecommunication without the Plaintiff's approval, including by configuring, advertising, offering for sale or selling Pirate Devices;
 - ii) manufacturing, importing, distributing, leasing, offering for sale, selling, installing, modifying, operating or possessing Pirate Devices that are used or intended to be used or designed to be used to receive the Plaintiff's subscription programming signal after it has been decoded;
 - iii) manufacturing, importing, distributing, leasing, offering for sale, selling, installing, modifying, operating or possessing Pirate Devices that are used or intended to be used or designed to be used to exhibit the Plaintiff's Works which have been imported without the Plaintiff's approval whether or not taken from the Plaintiff's programming signal or elsewhere;
 - iv) inducing, authorizing, or encouraging, educating or coaching anyone to initiate or undertake acts of infringement of the Plaintiff's right to communicate the Plaintiff's Works to the public by telecommunication including by configuring, advertising, offering for sale or selling Pirate Devices;
 - v) inducing, or authorizing, enabling or encouraging anyone to infringe the Plaintiff's right to reproduce the Plaintiff's Works or the communication signal on which the Plaintiff's Programs are carried, including by configuring, advertising, offering for sale or selling Pirate Devices that permit users to permanently or temporarily download, or stream the Plaintiff's Programming to which they have access without the Plaintiff's approval;
 - vi) configuring, advertising, offering for sale or selling any Pirate Devices having the characteristics and as described below;
 - vii) teaching, inducing, coaching or demonstrating to others including their own staff, friends and families how to steal or pirate the Plaintiff's Works.

- (b) For a declaration that copyright subsists in the Plaintiff's cinematographic works ("Plaintiff's Works");
- (c) For a declaration that the Plaintiff owns the Canadian rights to communicate these works to the public by telecommunication;
- (d) For a declaration that the Plaintiff is the authorized licensee of the Canadian rights to communicate these works to the public by telecommunication;
- (e) For a declaration that copyright subsists in the communication signals that the Plaintiff broadcasts and transmits;
- (f) For a declaration that the Defendants or one or more of them and including their employees, servants and agents;
 - i) have promoted, encouraged, or instructed the alteration or use of Internet Streaming Devices that can be used or are used for copyright infringement; (these devices are called 'Pirate Devices' herein);
 - ii) have communicated the Plaintiff's Works to the public by telecommunication, including by making the Plaintiff's Works available to users of Pirate Devices by telecommunication in a way that allows a member of the public to have access to them from a place and at a time individually chosen by that member of the public, without compensation to the Plaintiff, and in doing so, infringe the Plaintiff's copyright in the Plaintiff's Works pursuant to sections 2.4(1.1); (Herein these actions and omissions will sometimes be referred to as 'have engaged in Pirating the Plaintiff's Programming' or 'have Pirated the Plaintiff's Programming'.)
 - iii) have induced, educated, advised, enabled and/or authorized users of Pirate Devices, namely Defendant John Doe Customers, to initiate acts of infringement of the Plaintiff's right to communicate the Plaintiff's Works to the public by telecommunication, contrary to sections 3(1)(f) and 27(1) of the *Copyright Act*; (Hereinafter these actions and omissions will sometimes be referred to as 'teaching, encouraging or coaching their customers to steal the Plaintiff's programming')
 - iv) have circumvented, enabled, or encouraged the circumvention of the Plaintiff's or their programming suppliers' technological protection measures contrary to sections 41.1(a), (b) and (c) of the *Copyright Act*,

- v) have induced educated, advised, enabled and/or authorized users of Pirate Devices to infringe the Plaintiff's right to reproduce the Plaintiff's Works, contrary to sections 3(1) and 27(1) of the *Copyright Act*;
 - vi) have distributed, offered for sale, sold, installed or possessed equipment and devices that are used or are intended to be used as radio apparatus for the purpose of receiving the Plaintiff's encrypted subscription signal after it has been decoded otherwise than under and in accordance with an authorization from the Plaintiff, contrary to section 10(1)(b) of the *Radiocommunication Act*;
- (g) a declaration that the Defendants or one or more of them, including John Doe Customers have intentionally interfered with the economic and business relations of the Plaintiff;
- (h) a declaration that the actions of the Defendants, or two or more of them including the John Doe Customers, constitute an unlawful conduct conspiracy;

Damages Suffered as a result of actions by the Defendant Customers

- (i) damages suffered by the Plaintiff as a result of the acts of and unjust enrichment of the Defendants or any of them;
- (j) statutory damages suffered by the Plaintiff as a result of copyright infringements by the Defendants or one or more of them, including John Doe Customers or one or more of them;
- (k) damages suffered by the Plaintiff when the Defendants or one or more of them steal or view the Plaintiff's works or programming without compensation to the Plaintiff;

Damages Suffered as a result of actions by the 4Stores Defendants and their employees

- (l) damages suffered by the Plaintiff and an accounting of profits illegally made by the corporate Defendants (herein called the '4Stores Defendants' or '4Stores') or one or more of them or, in the alternative, statutory damages as the Plaintiff may elect, for acts that are contrary to the *Copyright Act*;
- (m) damages suffered by the Plaintiff and an accounting of profits illegally made by the 4Stores Defendants as the Plaintiff may elect after discovery on the issue of the Plaintiff's damages and the Defendants' profits, for acts that are contrary to the *Radiocommunication Act*;

- (n) damages suffered by the Plaintiff or an accounting of profits made by the 4Stores Defendants and/or as the Plaintiff may elect, for infringing acts contrary to sections 7 and 20 of the *Trademarks Act*;
- (o) damages suffered by the Plaintiff or an accounting of profits made by the 4Stores Defendants or one or more of them as the Plaintiff may elect, for use of the Plaintiff's trademarks or those of its suppliers in such a way as to have had the effect of depreciating the value of the goodwill attached to the Plaintiff's trade-marks contrary to sections 7 and 22 of the *Trademarks Act*;
- (p) damages suffered by the Plaintiff as a result of intentional interference with the Plaintiff's economic and business relations by the Defendants or one or more of them;
- (q) damages suffered by the Plaintiff as a result of the Defendants' unlawful conduct conspiracy;
- (r) damages suffered by the Plaintiff as a result of passing off by the 4Stores Defendants;
- (s) punitive, aggravated, and exemplary damages;
- (t) pre- and post-judgment interest;
- (u) costs of this action on a solicitor and client basis, plus GST, or HST, including all disbursements and costs of tracking and communicating with Customers, and
- (v) such further and other relief as to this Honourable Court may deem just.

The Parties

2. The Plaintiff is a corporation incorporated and subsisting under the laws of Alberta, having a registered office at Edmonton Alberta. It operates Broadcasting Distribution Undertakings (BDU's) which are licensed by the CRTC to broadcast, in return for financial compensation, a wide variety of audio visual programs such as movies, documentaries, and e-sports events across Canada. It transmits these works to its customers for viewing via cable, satellite and streaming services. It sometimes uses the name Super Channel which is a registered trade mark. Its subscribers are bound by contract that allows them to view the programs but not to rebroadcast them to others or earn money for allowing others to view them.
3. The Defendants Staples Canada ULC is a British Columbia Unlimited Liability Corporation with its registered office in Vancouver BC as recorded in a B.C. Company Summary dated March 20, 2019. The Defendants Staples Canada Inc., Staples Canada Holdings, LLC, Staples Canada Holdings III, LLC, Staples Promotional Products Canada, Ltd. , are all associated or related

companies operating in Canada engaged in a common enterprise as set out herein and are collectively called Staples. A press release by Staples in January 2018 advises that its new president, David Boone, oversees more than 300 stores and Staples.ca. which is a web site that offers Staples products for sale. It's internet profile says that its head office is in Richmond Hill Ontario.

4. The Defendant Best Buy Canada Ltd. is a Federal Corporation with its registered office address in Vancouver British Columbia and along with other affiliates or related companies, Best Buy Medical Supplies (Canada) Inc., Best Buy Mattress Country Canada Ltd., ('hereinafter collectively called Best Buy') operate in Canada. These Defendants or one or more of them operate one or more web sites including bestbuy.ca that offers its products for sale..
5. The Defendant London Drugs Limited (London Drugs), is British Columbia Corporation with its registered office in Vancouver B.C. and operates in Canada.
6. The Defendant Canada Computers Inc. is an Ontario Corporation with its registered office in Richmond Hill, Ontario. It sometimes carries on business using the name 'Canada Computers & Electronics' ('Canada Computers'). It operates in Canada. This Defendant operates one or more web sites including canadacomputers.com
7. The aforementioned 4Stores Defendants or one or more of them operate retail outlets or stores, and various other arrangements in Canada, for selling devices, electronic equipment, advice, and 'know-how' to the general public including web sites, call centers, social media arrangements, and applications. These also include teams of persons who will attend with or go to locations including homes of their customers.
8. The Defendants John Doe Customers ('4Stores Customers') are persons who have purchased, leased, financed or borrowed Pirate Devices from the 4Stores Defendants which are configured to allow the viewing of the Plaintiff's Programming without paying for it. These Pirate Devices are, with the encouragement and inducement of the 4Stores, used to steal the Plaintiff's Programming). The Plaintiff is deprived of income and goodwill by these actions.
9. This Honourable Court may be advised and determine to designate and create one or more classes of customer defendants upon such terms and conditions as the court deems appropriate.

The Plaintiffs and its Rights as Copyright Owner

10. The Plaintiff is a broadcaster or transmitter of copyright works including cinematographic works being movies, television series, documentaries, e-sports events and other programs that it

produces or licenses from others including all rights that permit it to broadcast them or distribute them by telecommunication. ('Plaintiff's Works' or 'Plaintiff's Programming')

11. The Plaintiff invests substantial resources in the licencing, development, production, broadcasting and transmission of its works and the unauthorized viewing, exhibition, reproduction or transmission of its works is pirating and causes substantial harm to the Plaintiff.
12. The Plaintiff invests substantial resources in the development of its branding and goodwill and in maintaining the integrity thereof. The unauthorized use of the Plaintiff's marks and goodwill (through the pirating, communication, reproduction or transmission of its works without authorization) causes substantial harm to the Plaintiff.

Plaintiff as BDU

13. The Plaintiff operates Canadian English Language premium cable, satellite, and streaming television channel(s) whose programming consists of cinematographic works such as movies, television series, documentaries, e-sports and other niche programs. The Plaintiff owns the Canadian rights to communicate this programming to the public by telecommunication.
14. The Plaintiff is a broadcast distribution undertaking (BDU) under the *Broadcasting Act*, S.C. 1991, c.11, meaning that they are in the business of receiving programming from a number of suppliers or creating their own programming and retransmitting them to subscribers by various means of telecommunication.
15. The Plaintiff devotes substantial resources to the development, production, acquisition and distribution of its programs and channels. The unauthorized reproduction, transmission or viewing of the Plaintiff's Works and communication signals causes substantial harm to the Plaintiff.
16. The Plaintiff invests substantial resources in the development of its branding and goodwill and in maintaining the integrity thereof. The unauthorized use of the Plaintiff's trademarks through unauthorized broadcasting, transmission, and streaming causes substantial harm to the Plaintiff.

The Plaintiff's Statutory Rights

17. Pursuant to the *Copyright Act*, the Plaintiff, holds the rights to, *inter alia*,:
 - (a) communicate the Plaintiff's Works to the public by telecommunication pursuant to section 3(f) including the right to make the Plaintiff's Works available to the public by telecommunication

(via television broadcast) in a way that allows a member of the public to have access to them from a place and at a time individually chosen by that member of the public pursuant to ss. 3(f) and 2.4(1.1)

- (b) reproduce the Plaintiff's Works or any substantial part of the Plaintiff's Programs in any material form whatever pursuant to section 3; and
- (c) authorize such acts, pursuant to section 3.

18. Pursuant to the *Copyright Act*, the Plaintiff holds the sole rights in their communication signal to, *inter alia*,

- (a) fix it,
- (b) to reproduce any fixation of it that was made without their consent,
- (c) to authorize another broadcaster to retransmit it to the public simultaneously with its broadcast, and
- (d) to authorize such acts

19. Pursuant to the *Trademarks Act*, the Plaintiff is entitled to the exclusive right to use its respective trademarks throughout Canada in respect of the goods or services with which they are registered, pursuant to section 19.

Internet Streaming Devices and Inducement/Authorization of Copyright Infringement

- 20. "Internet Streaming Devices" are a type of electronic device that can be connected to the internet these Internet Streaming Devices allow users to execute and use software that may be installed on the Internet Streaming Devices, which will be displayed on the device's television, monitor or screen.
- 21. . The devices which are the subject of this action have been programmed to steal programming i.e. view the Plaintiff's Programming without authorization and without paying for it. These are called Pirate Devices herein.
- 22. The 4Stores Defendants or one or more of them have offered for sale, sold, leased and continue to sell or lease Pirate Devices to their Customers, the John Doe Customers. Their staff and management advise, educate, encourage, induce, enable, coach or direct to purchase them so that they can steal Plaintiff's programming that they should pay for.
- 23. The 4Stores Defendants or one or more of them have offered for sale, sold, leased and continue to sell or lease Pirate Devices to John Doe Customers and advised, educated, counseled,

encouraged, directed, induced, enabled and authorized John Doe Customers to achieve, download, install and operate services that result in the operation of the Pirate Devices and/or that enable and allow the John Doe Customers to access the Infringing Content. They know the identity of the Customers who will be identified and added as identified parties following disclosure.

24. A reason for these actions is to encourage and increase the sales of the Pirate Devices which would not otherwise be purchased by John Doe Customers if it were not for the education provided by 4Stores sales staff and encouragement to buy them to steal programming. Often the 4Stores Defendants are engaged in bait and switch tactics that deceive, confuse, or mislead John Doe Customers to motivate them to purchase Pirate Devices.
25. Through their actions, the Defendants or one or more of them, including the John Doe Customers have willfully created or contributed to the creation of a culture of widespread copyright infringement through the use of Pirate Devices which is tantamount to theft. This causes substantial damage to the Plaintiff and the audio-visual entertainment industry as a whole.
26. But for the encouragement, inciting, direction, inducement, authorization, enabling and education provided by the 4Stores Defendants many John Doe Customers would not access Infringing Content. This is especially egregious because the 4Stores Defendants hold themselves out to be reputable, experienced, and trustworthy retailers in Canada which are relied on by Canadians for honest advice and service.
27. The 4Stores Defendants are advertently contributing to the creation of a culture of widespread infringement and theft. Their actions are high handed and unfair to their customers and causing damage to the Plaintiff. They are acting against the public interest in Canada. The Plaintiff claims punitive, aggravated and exemplary damages as well as a level of statutory damages above the amount that can be substantiated to recognize the great difficulty in policing and detecting the extent of the theft by their customers.
28. The Defendants or one or more of them have deployed and operated Pirate Devices in their stores and engaged directly in infringing the Copyright Act by showing pirated programming to customers in their stores.
29. The 4Stores Defendants know the identity and co-ordinates of their customers who have purchased the Pirate Devices and received advice how to use them to steal programming. A full list of those customers will be obtained via discovery and they will be added as Defendants. The Plaintiff seeks an order that these Customer Defendants may be added as Defendants once they are identified without the necessity of amending the Style of Cause merely by serving them by registered mail. Alternatively the Court may elect to create one or more classes of Customer

Defendants to be added based on such criteria as the Court deems appropriate with a public and efficient method of service.

Specific Infringements

30. The specific infringements perpetrated by each store operated by the 4Stores and by each customer will be particularized prior to trial and include pirating of the Plaintiff's Works.

John Doe Customers are stealing

31. By accessing Infringing Content without authorization each Individual John Doe Customer is infringing the Plaintiff's right to reproduce its works pursuant to section 3 of the *Copyright Act*.

32. The 4Stores Defendants infringe by offering for sale and selling and inducing, and authorizing, educating, enabling, assisting, urging and recommending to John Doe Customers that they buy these Pirate Devices and use them for purposes which infringe the Plaintiff's rights.

33. By engaging in these acts, the 4Stores Defendants make the Plaintiff's Works available to users by telecommunications in a way that users have access to them from a place and time of their choosing without authorization of the Plaintiff.

34. The 4Stores Defendants know and intend that their actions as pleaded herein are to profit from the sale of Pirate Devices which their customers would not otherwise buy.

35. Part of the actions of the 4Stores which encourage infringement occurs by the acts or omissions of the employees, including management, of the 4Stores Defendants which has been captured on audio-video recordings in many of their stores via undercover surveillance.

Copyright Act – Contributory Infringement

36. Further or in the alternative the 4Stores Defendants collectively and individually, induce the John Doe Customers to directly infringe the Plaintiff's copyright in its works, and in particular:

- (a) These Defendants through their acts, both collectively or individually, influence the John Doe Customers to the point where, without this influence, infringement by the John Doe Customers would not otherwise take place;
- (b) These Defendants exercised this influence on the John Doe Customers knowing that such influence would result in infringing acts by the John Doe Customers; or

- (c) The John Doe Customers committed the infringing acts by streaming the Plaintiff's Works without authorization by or payment to the Plaintiff.

Technological Protection Measures

37. The 4Stores Defendants have acted contrary to section 41.1(1)(b) of the *Copyright Act* by importing, distributing, offering for sale or otherwise providing technology, devices or components, namely Pirate Devices.
- i) that are designed or produced primarily for the purposes of circumventing a technological protection measure, and/or
 - ii) the uses or purposes of which are not commercially significant other than when used for the purposes of circumventing a technological protection measure,
 - iii) the uses or purposes of which are not commercially significant other than when used for the purposes of stealing Plaintiff's programming.
38. The 4Stores Defendants have acted contrary to section 41.1(1)(c) of the *Copyright Act* by importing, distributing, offering for sale or otherwise providing technology, devices or components namely Pirate Devices and have marketed the technology, device or component as being for the purposes of circumventing a technological protection measure or have acted in concert with one or more persons in order to market the technology, device or component as being for those purposes.

Radiocommunication Act

39. The Plaintiff sometimes distributes its programming to subscribers by means of an encrypted communication signal. The encrypted signal and programming is intended to be accessed only by the Plaintiff's subscribers who are provided with the means of decrypting the signal as part of their paid subscription.
40. Pirate Devices are used as radio apparatus for the purpose of receiving programming without the authorization of the Plaintiff contrary to section 10(1)(b) of the *Radiocommunication Act*.
41. The 4Stores Defendants offering Pirate Devices for sale knowing or intending that they would be used in contravention of the *Radiocommunication Act*.

Trademarks Act

42. The Plaintiff's marks or those of the parties who supply its content appear on its works or programs. The Plaintiff's marks appear to the user, from time to time, as the works are viewed or transmitted. Since the broadcasting, transmission or streaming is unauthorized, the use of the

marks in this fashion is also unauthorized and contrary to the Plaintiff's exclusive rights under section 20 of the *Trademarks Act*.

Trademarks Act Damage to Goodwill

43. Section 7 and 22 of the Trademarks act prohibits any person from using a registered trademark in any manner that has the effect of decreasing the value of the goodwill attaching thereto or from passing off the Plaintiff's business or goodwill.
44. The Defendants, by their actions in illegally broadcasting, streaming or transmitting the Plaintiff's, programming and have damaged the integrity of the Plaintiff's marks and decreased their value.

Intentional Interference with Business or Economic Relations

45. The 4Stores Defendants have disrupted and damaged the Plaintiff's business by influencing, engaging in or permitting the purchase decisions and actions of third parties, namely the John Doe Customers, and in particular, by encouraging, educating, counselling the John Doe Customers as to the availability of infringing technology and inciting the John Doe Customers use thereof.
46. The interference was by unlawful means, including by encouraging, inciting, influencing and educating the commission of copyright infringement and importing infringing copies of copyright works as well as by misrepresentation and false and defamatory statements.
47. The Plaintiff has suffered substantial damages.

Unjust Enrichment

48. In some instances, 4Stores Defendants directed John Doe Customers to outside service providers who would install extra, or updated, or new infringing software on the Pirate Devices to enable an enhanced ability to stream illegal content. In those instances, the outside service providers would pay a referral fee to the 4Stores Defendant's staff in consideration of the referral.
49. In these instances the 4Stores Defendants were unjustly enriched in that:
 - (a) Their employees received benefits or emoluments thereby reducing the compensation that the 4Stores Defendants would otherwise have had to pay their employees.
 - (b) Their sales were enhanced by peripheral sales of other devices or services related to the piracy;

- (c) The Plaintiff suffered a corresponding and far greater loss because of the actions of the 4Stores Defendants in encouraging and allowing these practices, and
- (d) There was no justifiable reason in law for the benefit and the loss.

Copyright Act – Contributory Infringement

50. Further or in the alternative all of the 4Stores Defendants both collectively and individually, induced the John Doe Customers to directly infringe the Plaintiff's copyright in its works, and in particular:
- (a) These Defendants through their acts, both collectively or individually, influenced the John Doe Customers to the point where, without this influence, infringement by the John Doe Customers would not otherwise take place;
 - (b) These Defendants exercised this influence on the John Doe Customers knowing that such influence would result in infringing acts by the John Doe Customers; and
 - (c) The John Doe Customers committed the infringing acts by streaming the Plaintiff's Works without authorization by or payment to the Plaintiff.

Unlawful Conduct Conspiracy

51. The 4Stores Defendants acted in concert, by agreement or with a common design to encourage, enable, educate, instruct, counsel, enable and incite the John Doe Customers and other co-conspirators to circumvent and infringe the rights of the Plaintiff and the Plaintiff suffered damages as a result.
52. The Defendants and John Doe Customers or two or more of them are co-conspirators engaged in acts contrary to the *Copyright Act, Radio-Communications Act, Trademarks Act, Criminal Code, Combatting Counterfeit Products Act (S.C.2014 c. 32)*, that were directed toward circumventing the rights of the Plaintiff. The particulars of the conspiracies are as set out herein.
53. The Defendants' conduct was directed toward the Plaintiff. The Defendants were well-aware of the Plaintiff's rights in their Works and that the Defendant's actions would lead to infringement of the Plaintiff's rights by the John Doe Customers and that the Plaintiff would suffer damages and loss of reputation as a result.
54. Further or in the alternative the particulars of the conspiracy include the following:

- (a) -selling and educating with respect to the operation of Pirate Devices that show programming for which the Plaintiff has exclusive rights without the Plaintiff's consent;
- (b) -counseling and training employees to operate, promote, and sell Pirate Devices;
- (c) -educating employees and customers how to operate Pirate Devices to show programming without paying for it;
- (d) -educating employees how to promote the sale of Pirate Devices via sales pitches that encourages theft of programming;
- (e) -selling Pirate Devices with the intention that they be used for viewing without permission programming for which the Plaintiff has exclusive rights without the Plaintiff's consent;
- (f) -demonstrating the Pirate Devices to customers and taught them how to access copyrighted programming without permission;
- (g) -interacting with persons not employed by 4Stores to initiate or perform the actions and omissions listed above

Counselling to commit an offence

55. The Defendants or one or more of them are counseling customers to commit theft, breaches of the *Trademarks Act* or breaches of the *Copyright Act*.

Passing off

56. The 4Stores are engaged in a scheme of passing off to sell or promote programming services that do not belong to them for commercial reasons without acknowledging and more importantly, compensating the owner of those services i.e. the Plaintiff. The Plaintiff is entitled full deference and respect of its goodwill and the right to demand and be awarded compensation. The actions of the 4Stores which encourage the trade with and as internet pirates frustrate this entitlement. This passing off by the 4Stores warrants the imposition of punitive damages.

Intentional Interference and high handed actions

57. The Plaintiff is being damaged by the intentional interference with its business and economic interests. Without limiting the generality of the foregoing by promoting a culture of

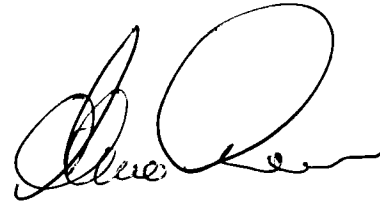
encouragement of theft from the Plaintiff the Defendants or one or more of them have promoted and sold Pirate Devices which they know and intend are being used and will be used to effect theft of programming which the Plaintiff broadcasts and for which it has exclusive rights to do so in Canada.

58. The Plaintiff has alerted the 4Stores of the interference they were causing with the Plaintiff's business and the losses it was sustaining as a result of their actions. Letters written by the Plaintiff to alert the 4Stores and then cause them to cease and desist were ignored or rejected. These were then followed by letters from Plaintiff's counsel which then led to a series of without prejudice meetings. As the 4Stores activities continued formal cease and desist letters were sent by registered mail. The 4Stores have continued the activities described herein throughout and to the present day thus continuing to profit from the sale of the Pirate Devices while the Plaintiff has continued to sustain losses and damages.
59. The actions of the 4Stores constitute a public nuisance in that they encourage a culture of dishonesty and theft within the general public in Canada which is promoted by 4Stores. The 4Stores fashion and promote themselves as industry leaders and educators in the promotion, education, and guidance of Canadians in the electronic devices market while acting to the contrary.
60. The actions and omissions of the 4Stores as pleaded herein are high handed and advertently misleading in the pursuit of profit and unreasonably interfere with the public's interest in questions of honesty, conscience and morality and preservation of Canadian Culture., including ethnic and indigenous Canadian culture. As such they merit the award of punitive damages or the maximum level of statutory damages prescribed in the Copyright Act.

Public Nuisance and importing infringing content

61. The 4 Store Defendants are importing or conspiring with others including their customers and suppliers to import infringing copies of copyrighted works. Anything other than the exhibition of these works by Super Channel constitutes an infringement. These works which are created in and imported from the United States or elsewhere may only be imported with permission from the copyright owners.
62. The Plaintiff pleads the *Trademarks Act* including section 7, the *Criminal Code of Canada* including sections 408 and 420, the *Copyright Act*, the *Radiocommunication Act* and the *Combating Counterfeit Products Act*. (S.C.2014 c.32)

Bill McKenzie
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A handwritten signature in black ink, appearing to read 'Bill McKenzie', with a large, stylized initial 'B' and 'M'.

per K W M. MCKENZIE

**ALLARCO ENTERTAINMENT
2008 INC.**

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and-

STAPLES CANADA ULC, et al

Defendants

Court File No.:

Plaintiff

FEDERAL COURT OF CANADA

File commenced at Toronto

STATEMENT OF CLAIM

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