

Federal Court



Cour fédérale

Date: 20190320

Docket: T-759-16

Ottawa, Ontario, March 20, 2019

PRESENT: The Honourable Mr. Justice Gascon

BETWEEN:

BELL CANADA
BELL EXPRESSVU LIMITED PARTNERSHIP
BELL MEDIA INC.
VIDÉOTRON S.E.N.C.
GROUPE TVA INC.
ROGERS COMMUNICATIONS CANADA INC.
ROGERS MEDIA INC.

Plaintiffs

and

2460269 ONTARIO INC. dba INFINITY TV

and others

Defendants

CONSENT JUDGMENT

UPON a motion made in writing by the Plaintiffs pursuant to Rule 369 of the *Federal Courts Rules*, SOR/98-106 for the issuance of a judgment on consent against the Defendant 2460269 Ontario Inc. dba Infinity TV [Defendant];

AND UPON the filing by the Plaintiffs and the Defendant of a consent for the issuance of the present judgment, duly signed by counsel for the Plaintiffs and for the Defendant;

AND UPON having reviewed the materials on the record;

AND UPON being satisfied that it is in the interests of justice to issue a judgment on consent as requested by the parties;

1. **THIS COURT DECLARES** that the Defendant 2460269 Ontario Inc. dba Infinity TV:

- a) has communicated television programs for which the Plaintiffs own the Canadian right to communicate to the public by telecommunication (“Plaintiffs Programs”, a non-exhaustive list of which is attached as Appendix 1 to the Plaintiffs’ Statement Of Claim) to the public by telecommunication, including by making the Plaintiffs Programs available to users of “Pre-loaded Set-top boxes” (as that term is defined and described at paragraphs 22 to 35 of the Plaintiffs’ Statement of Claim) 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, consequently infringing the Plaintiffs’ copyright in the Plaintiffs Programs pursuant to sections 2.4(1.1), 3(1)(f) and 27(1) of the *Copyright Act*;

- b) has distributed, offered for sale, sold, installed and possessed equipment and devices that are used or are intended to be used as radio apparatus for the purpose of receiving the Plaintiffs' encrypted subscription programming signal after it has been decoded otherwise than under and in accordance with an authorization from the Plaintiffs, contrary to section 10(1)(b) of the *Radiocommunication Act*;
- c) has induced and authorized users of Pre-loaded Set-top boxes to initiate acts of infringement of the Plaintiffs' right to communicate the Plaintiffs Programs to the public by telecommunication, contrary to sections 3(1)(f) and 27(1) of the *Copyright Act*;
- d) has induced and authorized users of Pre-loaded Set-top boxes to infringe the Plaintiffs' right to reproduce the Plaintiffs Programs, contrary to sections 3(1) and 27(1) of the *Copyright Act*;

2. **THIS COURT ISSUES** a permanent injunction enjoining and restraining the Defendant 2460269 Ontario Inc. dba Infinity TV, by itself or by its shareholders, directors, officers, employees, representatives, agents, and any company, partnership, trust, entity or person under its authority or control, or with which it is associated or affiliated, from directly or indirectly:

- a) communicating Plaintiffs Programs to the public by telecommunication, including by configuring, advertising, offering for sale or selling set-top

boxes that are adapted to provide users with unauthorized access to the Plaintiffs Programs (i.e. “Pre-loaded Set-top boxes”);

- b) manufacturing, importing, distributing, leasing, offering for sale, selling, installing, modifying, operating and/or possessing Pre-loaded Set-top boxes that are used or intended to be used to receive the Plaintiffs’ subscription programming signal after it has been decoded otherwise than under and in accordance with an authorization from the Plaintiffs;
- c) inducing and/or authorizing anyone to initiate acts of infringement of the Plaintiffs’ rights to communicate the Plaintiffs Programs to the public by telecommunication, including by configuring, advertising, offering for sale and/or selling Pre-loaded Set-top boxes;
- d) inducing and/or authorizing anyone to infringe the Plaintiffs’ right to reproduce the Plaintiffs Programs and/or the communication signal on which the Plaintiffs Programs are carried, including by configuring, advertising, offering for sale and/or selling Pre-loaded Set-top boxes that permit users to permanently download the content to which they have access;
- e) advertising, offering for sale or selling subscriptions to Private Internet Protocol Television Services (“Private IPTV Services”, as described and defined at paragraphs 33 and 34 of the Statement of Claim); and

- f) configuring, advertising, offering for sale and/or selling the “ITV Unit” Pre-loaded Set-top box, or any set-top box that provides unauthorized access to Plaintiffs Programs or to television stations owned and operated by the Plaintiffs (“Plaintiffs Stations”, a non-exhaustive list of which is attached as Appendix 2 to the Plaintiffs’ Statement of Claim);
3. **THIS COURT ORDERS** the Defendant 2460269 Ontario Inc. dba Infinity TV to pay the Plaintiffs the amount of five million dollars (\$5,000,000) in the form of a lump sum for damages, profits, punitive and exemplary damages, and costs;
4. The present Judgment brings an end to the dispute between the Plaintiffs and the Defendant 2460269 Ontario Inc. dba Infinity TV, as defined in the pleadings.

"Denis Gascon"

Judge