

Federal Court



Cour fédérale

Date: 20170612

Docket: T-800-17

Ottawa, Ontario, June 12, 2017

PRESENT: The Honourable Mr. Justice LeBlanc

BETWEEN:

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

Plaintiffs

and

ADAM LACKMAN dba TVADDONS.AG

Defendant

AMENDED ORDER

NOTICE TO THE DEFENDANT

1. The Plaintiffs' cause of action against you is set out in the Statement of Claim, a copy of which is served upon you with this Amended Order
2. This Amended Order contains, *inter alia*, an Interim Injunction which enjoins and restrains you from engaging in certain specified activities, and which authorizes a bailiff

assisted with computer forensic experts to take control of certain Internet domains, subdomains, social media accounts and hosting provider accounts, as further described in this Amended Order, for a period of fourteen (14) days. You are advised to read the terms of the Interim Injunction very carefully and to comply with them.

3. This Amended Order also contains an Anton Piller Order, the terms of which are detailed below, which authorizes the Plaintiffs' solicitors and a bailiff to inspect the contents of the premises at the locations described in this Amended Order, and to remove or make copies of the property specified in this Amended Order. This Amended Order also orders you to provide certain information to the Plaintiffs' solicitors and to the bailiff. You should read the terms of this Amended Order very carefully.
4. You are entitled to seek the advice of counsel before complying with the terms of the Anton Piller Order, provided that such advice is sought and obtained within a delay deemed reasonable by the independent supervising counsel. If you are unable to pay for legal fees, legal aid may be available to you by contacting a legal aid office.
5. You may be entitled to claim solicitor-client privilege in respect of communications (oral or written) you have had or will have with your attorney. The Anton Piller Order does not require you to disclose solicitor-client communications, and a protocol to handle digital evidence with regard to privileged information and documents is attached as Schedule III to this Amended Order.
6. Before you (the Defendant) or any other person appearing to be in control of the premises allow anybody onto the premises to carry out the Anton Piller Order, you are entitled to have the Plaintiffs' solicitors, the independent supervising counsel or the bailiff who served you with a copy of this Amended Order explain to you what it means in plain, every day language.
7. When the Anton Piller Order is explained to you, only the supervising counsel, two bailiffs, a videographer and Plaintiffs' solicitors, plus such law enforcement officers as

may be required, may enter your premises. However, after the Anton Piller Order has been explained and you have permitted entry, the persons designated in the terms of the Anton Piller Order, below, may participate in the enforcement of the Anton Piller Order, as described below.

8. You are required to permit entry onto the premises to the persons specified below on Monday to Saturday starting at 8:00am, or earlier if necessary to enforce this Amended Order, and until such time is reasonable and necessary to complete the execution of this Amended Order, within fourteen days of the date of service of this Amended Order.
9. Your premises may not be searched and property may not be removed therefrom, except in your presence or that of a person apparently in control of the premises on your behalf. If the Plaintiffs' solicitors are satisfied that full compliance with this paragraph is impracticable, they may permit the search to proceed and property to be removed without compliance with the impracticable requirements.
10. This is a civil proceeding and not a criminal one. You can refuse entry to the premises for the execution of the Anton Piller Order, but if you refuse the Court may draw adverse inferences from your refusal, and you will be in breach of a Court Order under Rule 466(b) of the *Federal Courts Rules* and subject to a fine and/or imprisonment under Rule 472 of the *Federal Courts Rules*. Copies of the *Federal Courts Rules* may be obtained on request to the Administrator of the Federal Court in Ottawa, Ontario (telephone 613-922-4238) or at any local office.
11. You are entitled to remain silent and to refuse to answer questions other than the questions specified in this Amended Order below.
12. The Plaintiffs' solicitors or the bailiff will provide you with a copy of the motion materials pursuant to which this Amended Order was rendered, and a notice of motion to review the execution of the Anton Piller Order, which shall be presented to the Federal Court within fourteen days of the date when you are served with this Amended Order,

and where you may ask the Court to vary or set aside this Amended Order. You may request an earlier hearing of the review motion for the purpose of having this Amended Order set aside or varied. Any such request shall be made by notice of motion properly served on the Plaintiffs' solicitors.

13. If you fail to defend this proceeding, as described in the Statement of Claim that will be served upon you by the Plaintiffs' solicitors or the bailiff, judgment may be given against you in your absence and without further notice to you, and the property removed from the premises pursuant to this Amended Order may be destroyed.

TERMS OF THE AMENDED ORDER

UPON motion made *ex parte* and *in camera* by the Plaintiffs for (a) an Interim Injunction Order pursuant to Rule 374 *F.C.R.* (b) an Anton Piller Order pursuant to Rule 377 *F.C.R.*, and other Orders.

UPON considering the Plaintiffs' motion record and oral submissions at the hearing of this motion;

UPON considering the Plaintiffs' undertaking to abide by any damage award made by the Court arising out of any improper execution of this Amended Order, or upon this Amended Order being set aside;

UPON considering that the Plaintiffs have deposited with the Court a security for damages in the amount of \$50,000;

AND UPON being satisfied that the Order sought should issue, based on the evidence presented by the Plaintiffs;

THE COURT ORDERS AS FOLLOWS:

- A) Grants leave to bring this motion *ex parte* and *in camera*.

- B) Issues an Interim Injunction Order, to remain valid for a period of fourteen (14) days from the date of service of this Amended Order upon the Defendant, within which time, or at the expiration of which time the Plaintiffs may apply to convert the Interim Injunction into an interlocutory injunction:
 - 1. Enjoining and restraining Adam Lackman, by himself or by his employees, representatives and agents, or by any company, partnership,

trust, entity or person under his authority or control, or with which he is associated or affiliated, from directly or indirectly:

- i. communicating works for which the copyright is owned by the Plaintiffs (the “**Plaintiffs Programs**”, which include but are not limited to the Plaintiffs Programs listed as Appendix 1 to the Statement of Claim) to the public by telecommunication, including by directly or indirectly participating in the development, hosting, distribution or promotion of any KODI add-ons that provide users with unauthorized access to the Plaintiffs Programs (“**Infringing Add-ons**”, which include but are not limited to the Infringing Add-Ons listed as Appendix 2 to the Statement of Claim), of the “FreeTelly” application, of the “Indigo” tool, or of any similar software application, including through the operation of the websites www.tvaddons.ag, www.offshoregit.com, or any other website providing similar services;
- ii. making the Plaintiff Programs available to the public 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, including by directly or indirectly participating in the development, hosting, distribution or promotion of Infringing Add-ons, of the “FreeTelly” application, of the “Indigo” tool, or of any similar software application, including through the operation of the websites www.tvaddons.ag, www.offshoregit.com, or any other website providing similar services;
- iii. 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 directly or indirectly participating in the development, hosting, distribution or

promotion of Infringing Add-ons, of the “FreeTelly” application, of the “Indigo” tool, or of any similar software application, including through the operation of the websites www.tvaddons.ag, www.offshoregit.com, or any other website providing similar services;

2. Ordering Adam Lackman to:

- i. provide to the bailiff authorized to operate in the Province of Quebec (the singular term “bailiff” includes the plural, and hereinafter includes independent supervising counsel(s), and any authorisation or order aimed at a bailiff is equally aimed at additional bailiffs and at independent supervising counsel(s)) attending the execution of this Amended Order with the login credentials for the registrar accounts with which the domains and subdomains listed in **Schedule I** to this Amended Order are registered, and for the hosting provider accounts with which the content found at these domains and subdomains is hosted;
- ii. disclose to the Plaintiffs’ solicitors and to the bailiff any other domains, subdomains, registrar account and hosting provider account related to the development, hosting, distribution or promotion of Infringing Add-ons, of the FreeTelly application, of the Indigo tool, and of any similar software application;
- iii. provide to the bailiff attending the execution of this Amended Order his login credentials for the registrars accounts and hosting provider accounts obtained pursuant to paragraph 2(ii) above, including for the registrar account with which the domains and subdomains obtained pursuant to paragraph 2(ii) above are

registered, and for the hosting provider accounts with which the content found at these domains and subdomains is hosted;

- iv. provide to the bailiff attending the execution of this Amended Order the login credentials for the TVAddons Twitter account (www.twitter.com/TVADDONS), the TVAddons Facebook page (www.facebook.com/TVADDONS), the TVAddons Instagram page (www.instagram.com/TVADDONS) and the TVAddons YouTube page (www.youtube.com/user/XBMCHUB);
3. Authorising computer forensic experts, acting under the supervision of the Plaintiffs' solicitors and of the bailiff, to log into:
 - i. the registrar accounts with which the domains and subdomains listed in **Schedule I** of this Amended Order or obtained pursuant to paragraph 2(ii) above are registered (hereinafter collectively the "TVAddons Domains and Subdomains");
 - ii. the hosting provider accounts obtained pursuant to paragraph 2(ii) above or on which the content found on the TVAddons Domains and Subdomains is hosted; and
 - iii. the TVAddons social media accounts mentioned at paragraph 2(iv) above,using the credentials obtained pursuant to paragraph 2 above;
4. Authorising computer forensic experts, acting under the supervision of the Plaintiffs' solicitors and of the bailiff, to modify the login credentials and account information for the TVAddons Domains and Subdomains registrar accounts and hosting provider accounts, and for the TVAddons social media accounts mentioned at paragraph 2(iv) above;

5. Authorising computer forensic experts, acting under the supervision of the Plaintiffs' solicitors and of the bailiff, to deactivate the TVAddons Domains and Subdomains and the TVAddons social media accounts mentioned at paragraph 2(iv) above;
 6. Authorising computer forensic experts, acting under the supervision of the Plaintiffs' solicitors and of the bailiff, to transfer the TVAddons Domains and Subdomains to one or more registrar account(s) under the control of the bailiff such that the bailiff acts as custodians thereof, and to transfer control over the hosting provider accounts on which the content found on the TVAddons Domains and Subdomains in the same manner;
 7. Ordering the bailiff to act as custodian of the login credentials modified pursuant to paragraph 4 above;
 8. Authorising solicitors to the Plaintiffs to send out the "Notice to Internet Service Providers" attached as **Schedule II** of this Amended Order to the necessary registrars, hosting providers, social media platforms and other third parties to ensure that the tasks undertaken pursuant to paragraphs 3 to 7 above can have their full intended effect and are not interfered with by third parties;
 9. Enjoining and restraining Adam Lackman from interfering with the tasks undertaken pursuant to paragraphs 3 to 8 above;
- C) Issues an Anton Piller Order, to remain valid for a period of fourteen (14) days from the date of service of this Amended Order upon the Defendant, within which time, or at the expiration of which time a motion to review the execution of said Anton Piller Order (the "Review Motion" mentioned above) shall be made returnable before this Court, under the following terms:

1. Orders the Plaintiffs' solicitors and the bailiff to:
 - i. Serve on the persons on whom the Anton Piller Order is executed, at the outset of such execution, a copy of this Amended Order, of the material in support thereof, including affidavits, of the Statement of Claim, and of the Notice of Motion for review of the execution of the Anton Piller Order (i.e. the Review Motion) to be made returnable within or at the expiration of fourteen (14) days from the date of service of the Anton Piller Order;
 - ii. Explain the Anton Piller Order to the persons on whom this Amended Order is executed;
 - iii. Limit the number of people in attendance during the service and explanation of the Anton Piller Order, to avoid a climate of intimidation;
2. Orders the Plaintiffs' solicitors and bailiff to inform the persons on whom the Anton Piller Order is executed that they are entitled to seek the advice of counsel before complying with the terms of this Amended Order, but that such advice must be sought and obtained within a delay deemed reasonable by the independent supervising counsel;
3. Orders the Plaintiffs' solicitors and the bailiff to explain to the persons on whom the Anton Piller Order is executed that this proceeding is civil rather than criminal in nature, and that they can refuse entry to their premises, but that if they refuse they will be in breach of a Court Order under Rule 466(b) *F.C.R.* and subject to a fine and/or imprisonment under Rule 472 *F.C.R.*;

4. Authorises the Plaintiffs' solicitors, independent supervising counsel and bailiff to inspect the contents of Adam Lackman's residence at 301-430 rue McGill, Montreal, Quebec, including that of any computer or other digital device found therein, between 8:00am and 8:00pm on Monday to Saturday, or outside of these hours if necessary to enforce this Amended Order, and to make copies of or remove, as indicated, the following property that is, or will be, the subject-matter of this proceeding, or as to which a question may arise therein:

- i. make copies of:

1. all data, information and correspondence pertaining to TVAddons, Infringing Add-ons, the "FreeTelly" application, the "Indigo" tool, or any similar software application, stored on digital media or otherwise, including data, information and correspondence that is located on local or remote servers;
2. all other data and material related to the development, hosting, operation, distribution and promotion of TVAddons, Infringing Add-ons, the "FreeTelly" application, the "Indigo" tool, or any similar software application, including but not limited to logs pertaining to TVAddons' Infringing Add-ons, FreeTelly or Indigo downloads and related information, stored on digital media or otherwise, including data and material that is located on local or remote servers;
3. financial records, whether in the form of digital or physical invoices, journals, lists, bank account information (including balance and account history), correspondence or

other documents, pertaining to Adam Lackman's and TVAddons' revenues, including but not limited to advertising revenues, sale referrals, and donations made to TVAddons;

- ii. remove all material listed at paragraph 4(i) that is not in digital form on a computer or digital device or which cannot practically be copied.
 - iii. make mirror images of the entire devices, servers or other local or remote digital media containing or likely to contain the elements listed at paragraph 4(i) above, if making copies of solely these elements is not practicable.
5. Orders Adam Lackman or persons in charge of Adam Lackman's premises to open and make available to the persons enforcing this Amended Order any vehicle, container, safe or storage area within their possession, custody or control, open any locked doors of the premises behind which the persons enforcing this Amended Order have reasonable grounds to believe there may be any aforementioned property, information or documentation, provide to the persons enforcing this Amended Order any login credentials necessary to enforce this Amended Order, provide to the persons enforcing this Amended Order the means necessary to decrypt any encrypted device as necessary to enforce this Amended Order, and otherwise assist by any other means the persons enforcing this Amended Order in accessing any aforementioned property, information and documents;
6. Orders Adam Lackman or persons in charge of Adam Lackman's premises to immediately deliver up to the persons enforcing this Amended Order

any aforementioned property, information and document within his possession, custody or control;

7. Orders Adam Lackman or persons in charge of Adam Lackman's premises not to take any steps to destroy or conceal any aforementioned property, information or document;
8. Authorises computer forensic experts, acting under the supervision of the Plaintiffs' solicitors and of the bailiff, to assist the Plaintiffs' solicitors and the bailiff with the inspection, retrieval, recovery, preservation and copy of the data and materials which are to be taken into custody to be preserved as evidence in this proceeding;
9. Authorises the Plaintiffs' solicitors to attend at the execution of the Anton Piller Order, in their capacity as officers of justice and in light of the duties which they owe to the Court in that regard;
10. Authorises one representative for each of the following groups of Plaintiffs:
 - i. Bell Canada; Bell ExpressVu Limited Partnership; Bell Media Inc.;
 - ii. Vidéotron S.E.N.C.; Groupe TVA Inc.; and
 - iii. Rogers Communications Canada Inc.; Rogers Media Inc.;

to attend at the execution of this Amended Order only to the extent necessary to assist the Plaintiffs' solicitors, the bailiff, the independent supervising counsel and/or the computer forensic experts in the execution of this Amended Order;

11. Authorises independent supervising counsel hired by the Plaintiffs to monitor the execution of the Anton Piller Order and to report to the Court on the Review Motion;
12. Authorises law enforcement officers to attend at the execution of this Amended Order only to the extent necessary to maintain the peace;
13. Authorises the Plaintiffs' solicitors and the bailiff, or persons acting under the supervision of the Plaintiffs' solicitors and of the bailiff, to record, through video, audio and photographic means, all or parts of the execution of this Amended Order;
14. Authorises the Plaintiffs' solicitors and the bailiff to ask Adam Lackman to disclose, and orders Adam Lackman to disclose:
 - i. the location of all data, information and correspondence pertaining to the development, operation, hosting, distribution or promotion of TVAddons, Infringing Add-ons, the "FreeTelly" application, the "Indigo" tool, or any similar software application;
 - ii. the location of all financial records, whether in the form of physical or digital invoices, journals, lists, bank account information (including balance and account history), correspondence or other documents, pertaining to his and TVAddons' revenues associated with the development, operation, hosting, distribution or promotion of TVAddons, Infringing Add-ons, the "FreeTelly" application, the "Indigo" tool, or any similar software application, or of the websites www.tvaddons.ag, www.offshoregit.com or any other website providing similar services;
 - iii. the login credentials for the registrar accounts with which the domains and subdomains listed in **Schedule I** of this Amended

Order or which were disclosed pursuant to this Amended Order are registered, and for the hosting provider accounts with which the content found at these domains and subdomains is hosted;

- iv. the username, name and address of all other companies, partnerships, trusts, legal entities and persons that are or were directly or indirectly involved in the development, operation, hosting, distribution or promotion of TVAddons, Infringing Add-ons, the “FreeTelly” application, the “Indigo” tool, or any similar software application;

15. Orders the Plaintiffs’ solicitors and the bailiff to prepare a list of the property or documents taken into custody to be preserved as evidence in this proceeding, to serve said list on the persons from whom said property or documents were taken, and to return said property and documents to said persons promptly once copies thereof have been made, to the extent that copies can be made;

16. Authorises the Plaintiffs’ solicitors and the bailiff to place the aforementioned property and documents, or copies thereof, under the custody of a guardian to be designated by the bailiff, for the purpose of preserving it as evidence to be used in this proceeding, as the Court may permit upon motion, and at the Plaintiff’s costs pending the final determination of the issues in this proceeding, which costs shall ultimately be borne by the party so designated in said final determination;

17. Failing an agreement to the contrary between the parties, orders the parties to comply with the protocol provided at **Schedule III** of this Amended Order to ensure that the aforementioned property, or copies thereof, that are taken into custody to be preserved as evidence in this proceeding, are purged of privileged documents and information before being remitted to the Plaintiffs and/or their solicitors;

18. Orders the bailiffs, once the protocol provided at **Schedule III** of this Amended Order has been completed, to provide solicitors for the Plaintiffs with copies of the property that is taken into their custody to be preserved as evidence in this proceeding and that has been purged of privileged documents and information;
 19. Orders the Plaintiffs to treat as confidential any information and material obtained pursuant to the execution of this Amended Order, and to only use such information and material for the purpose of the present proceedings;
 20. Exempts the Plaintiffs from any obligation to insure the aforementioned property taken from the aforementioned locations;
 21. Authorises the Plaintiffs solicitors and the bailiff to consult the documents and information obtained pursuant to the execution of this Amended Order for the purpose of continuing the Interim Injunction and Anton Piller Order, and for the purpose of the Review Motion;
 22. Authorises the Plaintiffs' solicitors and the bailiff to continue the Interim Injunction described at paragraph A) above and the Anton Piller Order described at paragraph B), with the necessary modifications, on the basis of the information and answers obtained pursuant to the Interim Injunction and Anton Piller Order, at the premises of the persons and entities thus identified.
- D) Issues ancillary orders to ensure the proper effect of the Interim Injunction and Anton Piller Order:
1. Orders the Defendant to cooperate with the persons executing this Amended Order;

2. Authorises a locksmith, acting under the supervision of the bailiff, to attend at the execution of this Amended Order in order to unlock or otherwise provide access leading to the front door of 301-430 rue McGill, Montreal, Quebec, and to any other premise pursuant to which the Interim Injunction or Anton Piller Order may be continued as provided for by this Amended Order;
3. Enjoins and restrains every person on whom this Amended Order is served, or who has notice of this Amended Order, to refrain, during the execution of said Amended Order, from using a computer, telephone, or any other communication device, except in the presence or with the authorization of the independent supervising counsel;
4. Enjoins and restrains every person on whom this Amended Order is served, or who has notice of this Amended Order, to refrain for a period of forty-eight (48) hours after such service or notice from:
 - i. disclosing to, or discussing with, any other person, the existence of this proceeding and of this Amended Order, except with legal counsel for the purpose of obtaining legal advice with respect to this proceeding or this Amended Order; and
 - ii. otherwise informing or warning any other person that the Plaintiffs might execute the Anton Piller Order against him or her;

E) Issues a confidentiality order in the following terms:

1. Orders that the confidential version of the affidavit of Andrew McGuigan filed in support of this motion be kept under confidentiality seal on a CONFIDENTIAL basis;

2. Orders that the following documents be treated on a CONFIDENTIAL – COUNSEL’S EYES ONLY basis, such that these documents may only be accessed by the Court, counsel for the parties and the producing Plaintiff, as follows:

- i. Exhibits SO-10 and SO-11 of the Affidavit of Shawn Omstead: Counsel’s Eyes Only with exclusive access to the Plaintiffs Bell Canada, Bell ExpressVu Limited Partnership and Bell Media Inc.;
- ii. Exhibits JM-9 and JM-10 of the Affidavit of Jon Medline: Counsel’s Eyes Only with exclusive access to the Plaintiffs Rogers Communications Canada Inc. and Rogers Media Inc.; and
- iii. Exhibits PT-9 to PT-11 of the Affidavit of Peggy Tabet: Counsel’s Eyes Only with exclusive access to the Plaintiffs Vidéotron S.E.N.C. and Groupe TVA Inc.

F) Costs on the present motion are to be determined in the context of the Review Motion.

"René LeBlanc"

Judge