

FEDERAL COURT

B E T W E E N:

**ROGERS MEDIA INC.
GROUPE TVA INC.**

Plaintiffs

- and -

**JOHN DOE 1, JOHN DOE 2
OTHER UNIDENTIFIED PERSONS WHO
OPERATE UNAUTHORIZED STREAMING SERVERS
THAT PROVIDE OR WILL PROVIDE
ACCESS TO MLB LIVE GAMES IN CANADA**

Defendants

- and -

**BELL CANADA
BRAGG COMMUNICATIONS INC. dba EASTLINK
COGECO CONNEXION INC.
FIDO SOLUTIONS INC.
ROGERS COMMUNICATIONS CANADA INC.
SASKATCHEWAN TELECOMMUNICATIONS
TEKSAVYY SOLUTIONS INC.
TELUS COMMUNICATIONS INC.
VIDEOTRON LTD.
2251723 ONTARIO INC. dba VMEDIA**

Third Party Respondents

INITIAL CONFIDENTIAL REPORT
PURSUANT TO THE ORDER DATED JULY 18, 2023

STATEMENT OF ISSUE(S)

One Key Issue: Carry out the mandate assigned by the Order dated July 18, 2023 issued by The Honourable Mr. Justice Lafrenière: **Review and verify** the application of the criteria by the Plaintiff's Agent for the identification of IP addresses for blocking, and criteria applied that resulted in them being notified for blocking.

INTRODUCTION AND SUMMARY

We were able to review and independently verify the criteria used by FMST to select IP addresses for inclusion in the blocklist. We confirmed that 1,542 unique IP addresses were valid matches.

QUALIFICATIONS

- 1) I am a partner at the Toronto, Ontario, law firm of Lipkus Law LLP. The principal focus of my practice is in the area of intellectual property.
- 2) I received my Juris Doctor from the University Of Detroit Mercy School Of Law in 2008. I received a BA in Honours Philosophy: Reasoning and Ethics in 2005 from The University of Western Ontario. I became a member of the New York State Bar in March, 2009. I was called to the Ontario Bar in January, 2010.
- 3) I have conducted training sessions, workshops and lectures on intellectual property enforcement for various regional, municipal and Federal police forces, representatives of Canada Border Services Agency, private investigators, and various professional organizations.
- 4) I have also regularly attended lectures, seminars and conferences on a variety of counterfeiting issues conducted by our firm and various intellectual property rights holders, including the International Anti-Counterfeiting Coalition (IACC), the largest international organization devoted solely to combating product counterfeiting and piracy and the International Trademark Association.
- 5) I regularly review jurisprudential developments in the field of Anton Piller Orders, and I am very much aware of the jurisprudence of this Honourable Court on Anton Piller Orders. I am mindful of the importance of respecting the rights of the person(s) on which an Anton Piller Order is executed including third parties in attendance during the execution of an Anton Piller Order, and take my responsibilities as an officer of the court in this regard very seriously.
- 6) I have executed several Anton Piller Orders granted by this Honourable Court and the Superior Court of Justice in Ontario as an independent supervising solicitor.

7) My work as an independent supervising solicitor in the *Tracey Clancey et al v. Tanvir Farid* matter (file number CV-17-587516) was commented on by the Honourable Justice Pattillo at paragraph 36 of his endorsement:

“I am satisfied, based on the material filed, that the APO was conducted in accordance with the terms of both the APO/Injunction Order and the December 11, 2017 Order extending it. I find that at all material times, the ISS and those accompanying him as authorized by the APO acted in both a courteous and professional manner at all times towards Farid.”

8) On behalf of my clients, I am involved with the removal of tens of thousands of online listings that include infringing content. I have been provided with access to (and utilization of) numerous third-party provider software, to assist with these intellectual property takedowns efforts. Additionally, I regularly review the policies of Registries, Registrars, ISPs, social media platforms, marketplaces and other intermediaries as it relates to intellectual property infringement.

9) Attached hereto and marked as Schedule A is a copy of my Curriculum Vitae including my rankings, speaking engagements, publications and memberships.

DISCUSSION

Review and verify the application of the criteria by the Plaintiff’s Agent for the identification of IP addresses for blocking:

10. The Plaintiffs’ Agent (Friend MTS Limited (“FMTS”)) searches for and identifies unauthorized copies of Copyrighted Content (as defined below) by using [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

12. Further, FMTS reports to the hosting provider on a daily basis whenever one or more of their servers are blocked so they can advise their customer (pirate streaming operator) and any complaint relating to the Plaintiffs' requests can be raised by the hosting provider and/or the customer (pirate streaming operator).

[REDACTED]

Review and Verification:

14) To facilitate our review and verification of the criteria for identifying IP addresses for blocking (including its application of the criteria set out in Confidential Schedule 2), FMTS provided us with a spreadsheet containing all IP addresses on the blocklist, and timestamps indicating when they were added to the blocklist, among other things. In total, 3,671 IP addresses were added to the blocklist. The information and documentation will remain on FMTS' portal for at least one year and will be accessible to us in the event we are required to produce any additional information concerning our review and verification.

15) When verifying these criteria, we used a sample set of 1,542 random unique IP addresses, totaling 3,235 instances where the IP address was confirmed to meet blocking criteria.

Time Limits

16) Pursuant to the terms of the Order, IP addresses added to the blocklist are those determined by FMTS to be part of streaming infrastructure making the Copyrighted Content available without authorization during the MLB Live Game Windows, as well as during the Pre-Monitoring Period.

Verification:

17) Reviewing the blocklist, we confirmed that all 1,542 unique IP addresses were added to the blocklist during the MLB Live Game Windows, as well as during the Pre-Monitoring Period.

██████████/Proprietary Technology

18) FMTS uses proprietary ██████████ technology which allows it to compare available content to legitimate samples of MLB games (referred to herein as “**Copyrighted Content**”). When matches are detected, the IP addresses of the source and associated streaming infrastructure are flagged for potential inclusion in the blocklist. Screenshots and video footage of the matched content are retained were made available, along with thumbnail images of the identified content and the legitimate sample content it was found to match.

Verification

19) To verify that the Copyrighted Content was properly identified, we reviewed all matches which resulted in an entry being made to the blocklist for the 1,542 IP addresses. Only blocklist entries added during the Pre-Monitoring Period, and MLB Live Game Windows) were reviewed. Some of the 1,542 unique IP addresses were found to be associated with multiple matches throughout the Pre-Monitoring Period, and MLB Live

Game Windows. In total, the selection included 3,235 instances confirmed to meet blocking criteria associated with these 1,542 unique IP addresses.

20) Our validity checking involved visual review of thumbnail images, screenshots, and video captured from online video streams for each, and comparing them to reference images of the Copyrighted Content this streaming content was matched against.

21) Additionally, from our review of the 1,542 unique IP addresses, 438 IP Addresses related to [REDACTED]. Our validity checking relating to these 438 IP Addresses involved visual review of thumbnail images, screenshots, and video captured from the [REDACTED] and comparing them to reference images of the Copyrighted Content this streaming content was matched against.

22) We confirmed that 1,542 unique IP addresses were valid matches.

Identification of Additional Unauthorized Content (pirated material)

23) FMTS indicated to us that it performs a [REDACTED] [REDACTED] to the streaming sources. Additionally, it indicated to us that in its experience with online streaming services, it is [REDACTED] [REDACTED] [REDACTED]

Verification

[REDACTED]
[REDACTED]

Determination of Absence of Legitimate Usage

25) FMTS indicated that not only does it use its knowledge of the online infringing video stream technologies to make a determination that a target IP address is unlikely to have any legitimate usage, it also uses [REDACTED] to confirm this in cases where the Copyrighted Content is found on [REDACTED] [REDACTED]. This involves [REDACTED]

[REDACTED] which determine if there is a [REDACTED]
[REDACTED]. Only if all [REDACTED] indicate there is no
[REDACTED] can it be added to the blocklist.

26) In order to avoid [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Verification

27) [REDACTED]
[REDACTED]
[REDACTED] that were associated with pirate streaming services, and were
found by FMTS to pass all tests indicating there is no legitimate usage and the IP
addresses can be added to the blocklist.

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

29) [REDACTED] listed in the Revised Confidential Schedule 2 contained in the
Amended Confidential Order dated October 5, 2023 of The Honourable Mr. Justice Roy.

Verification

[REDACTED]
[REDACTED]



David Lipkus

Date: December 22, 2023

David S. Lipkus
LSO#57890B



David S. Lipkus has dedicated his practice to stopping infringers from using or reproducing his clients' intellectual properties without permission in Canada, and online.

Mr. Lipkus principal focus is on intellectual property brand protection for trademarks, copyrights and industrial designs, insurance defence litigation including defence of professionals (solicitors and paralegals) as well as civil and commercial litigation.

Mr. Lipkus has extensive experience in these areas and has appeared as counsel in Small Claims Court, Superior Court of Justice, Federal Court, Federal Court of Appeal, Divisional Court and the Court of Appeal for Ontario. Mr. Lipkus has testified before Canadian Parliament at the House of Commons and Senate on strengthening anti-counterfeiting laws and procedures in Canada. Mr. Lipkus has defended paralegals in negligence actions and has been successful in obtaining judicial dismissals of cases without being required to proceed to trial.

Ranking and Recognition

Selected by his peers for inclusion in The Best Lawyers in Canada 2019 in the field of Intellectual Property Law (since 2016)

Selected by the World Trademark Review 1000 (Gold Band) Canadian Anti-Counterfeiting Lawyer—The Definitive Guide to Trademark Legal Services, which identifies the firms and individuals, by country, that are setting the industry benchmark for trademark legal services (since 2016)

Recipient of an Award in Recognition of Outstanding Contribution to the Toronto Police Service and the Community by the Toronto Police Service (2014)

Training Sessions, Lectures and Publications

Mr. Lipkus regularly conducts web based training of law enforcement throughout the year on behalf of several brand holders. He is active in educating law enforcement, customs, investigators and others about the impact of piracy\counterfeiting; particularizing ways in which to distinguish between authentic and pirated\counterfeit products; outlining techniques to assist law enforcement in obtaining criminal search warrants; and assisting law enforcement on behalf of brand owners in identifying and prosecuting criminal cases.

Since joining the firm, Mr. Lipkus manages all internet based counterfeiting investigation and enforcement. Mr. Lipkus regularly speaks at conferences dealing with a variety of subject matters and has lectured to lawyers, paralegals, law enforcement and other professionals.

Recent Speaking Opportunities:

- Comic-Con San Diego: Super Lawyers Unite – AI, NFTs, Parody and Other Hot Topics– July 22, 2023
- McGill/IPIC: Understanding Trademarks – Chair – July 10 - 14, 2023
- National Cyber Forensics & Training Alliance 2023 (Pittsburgh, PA) - Disruption of Counterfeit Sales on E-Commerce Platforms(Moderator) - May 10, 2023
- IACC (Nashville, TN) - New Technologies and Impact on IP and Brand Protection – Metaverse, NFTs, and Virtual Goods (Moderator) – April 2, 2023
- IPIC: Trademark Law Case Series – Infringement – March 25, 2023
- University of Miami Law x Sneaker Law–The Art of Customs: Artwork or Infringement – March 3, 2023
- McGill/IPIC: Understanding Trademarks – Co-Chair – July 11 - 15, 2022
- Franklin Pierce School of Law – IP Summer Institute Domains/Meta/NFTs/Web 3.0 June 10, 2022
- INTA – Anti-counterfeiting Workshop: Emerging Issues/Metaverse Panel Discussion - April 30, 2022
- University of Miami Law x Sneaker Law–Bootlegs, Customs and Replicas – March 4, 2022
- Georgia State University College of Law – Guest Lecture – Sneaker Law – November 10, 2021
- Osgoode Hall Fashion Law Society’s Annual Panel – November 10, 2021
- CIIDRC: Challenges in CDRP and UDRP Cases – September 27, 2021
- Spark Niagara: IP, Internet & Technology: Let’s Go Back to the Future – April 8, 2021
- McGill/IPIC: Understanding Trademarks - Counterfeits in Canada – July, 2021
- IPIC: Enforcement of IP Rights at Canada’s Border – June 4, 2020
- CBC Marketplace: Shopping Online – February 21, 2020
- Comic-Con San Diego: Super Lawyers Unite – Online Brand Protection – July 20, 2019
- McGill/IPIC: Understanding Trademarks (Montreal, QC) Counterfeits in Canada – July 12, 2019
- CACN M.E.E.T. – Counterfeits Online – June 21, 2019
- ASIS Toronto - Fraud & Counterfeiting – May 30, 2019
- IPIC – Basics of Law - Evidence: From Key Principles to Digital Evidence – April 12, 2019
- Seneca College - School of Marketing: Trademark Law - Sports and Event Marketing – Feb 5, 2019
- IQPC (San Francisco, CA) - Anti-counterfeiting: Online Counterfeiting Triage – January 31, 2019
- IPIC– Enforcement of IP Rights at Canada’s Border – January 17, 2019
- Seneca College - School of Marketing: Trademark Law - Sports and Event Marketing – Nov 20, 2018
- York University – Criminalization of Copyright Infringement in the Digital Space – October 19, 2018
- Canadian Bar Association (Toronto, Ontario) Social Media and Internet Law – October 15, 2018
- INTA Roundtable (Nashville, TN): Updates to Canadian Trademark Law - September 27, 2018
- McGill/IPIC: Understanding Trademarks (Montreal, QC) Counterfeits in Canada – July 27, 2018
- CACN M.E.E.T. – Counterfeits on Social Media – June 13, 2018
- Seneca College - School of Marketing: Trademark Law - Sports and Licensing – March 27, 2018
- IPIC: The Dark Web: What IP Owners Need to Know (Moderator) – February 28, 2018
- IACC Fall Conference: (Los Angeles, California): Buyer Beware: Strategies for Effective Public Awareness and Consumer Education Campaigns – October 19, 2017
- Retail Council of Canada: Phishing and Ransomware Attacks – September 19, 2017
- McGill/IPIC: Understanding Trademarks (Montreal, QC) Counterfeits in Canada – July 28, 2017
- Crime Stoppers International Conference (Kingston, ON) – Online Fraud – June 10, 2017
- CSA Group (Caledon, ON): IP Law – Year in Review – December 14, 2016
- IACC Fall Meeting (Scottsdale, Arizona): Brand Infringement on Social Media – October 20, 2016
- IPIC: Top IP Cases of the Year (Trademarks) (Quebec City, QC) – September 30, 2016
- Retail Council of Canada: The Threat of Counterfeits, Piracy and Fraud – September 29, 2016
- CBC: Ontario Morning: Scope of Counterfeiting problem in Canada – September 27, 2016
- Imaging Supplies Coalition: Brand Protection on Social Media (San Diego, CA) – September 19, 2016
- McGill/IPIC: Understanding Trademarks (Montreal, QC) – Keynote Speaker – July 28, 2016
- Ontario Bar Association: Intellectual Property and the Internet (Toronto, ON)– June 9, 2016
- The Embassy of Canada (Washington, DC): Project Chargeback – The Brand’s Perspective – June 2, 2016

- Mohawk College (Hamilton, ON): Fraud/Counterfeit Seminar – Social Media - January 22, 2016
- Law Society of Upper Canada (Toronto, ON): 20th Annual Intellectual Property Law: The Year in Review – Trademarks Update - January 21, 2016
- 20th Annual Fraud & Anti-Counterfeiting Conference (Toronto, ON) – Moderator, panelist and brand identification presenter - December 2-4, 2015;
- IACC Fall Meeting (Denver, CO): NAM Sandwich: The Bread and Butter of Seizing Counterfeit Products – Threats/Enforcement from the North - October 21, 2015
- Crime Stoppers International Conference (Toronto, ON): How Social Media is used by counterfeiters - September 27, 2015
- Professional Development for Practitioners – E & O Claims and how to avoid them – November 30, 2012
- Ontario Bar Association – Excelling at Articles (co-chair) – August 23, 2012 and August 24, 2011
- Ontario Bar Association (Toronto, Ontario) – Divine Discoveries (co-chair) – April 19, 2012
- IQPC (New York, NY) - Anti-counterfeiting & Brand Protection – Cost Effective Brand Protection Programs – September 27 – 29. 2010
- The Institute of Internal Auditors - How to Catch Fraud? – April 13, 2010

Publications:

- The Brand Protection Professional: A Practitioner’s Journal (June 2018): If You Build It, They Will Come: Canada Needs an IP Coordination Center
- Social Media and Internet Law (2nd Edition): Chapter 17 - IP Litigation of Counterfeit Goods, LexisNexis Canada
- Anti-counterfeiting 2012-2021 - “A Global Guide”, ‘Canada’, World Trademark Review
- Canadian Forms & Precedents – Debtor/Creditor 2nd Edition, LexisNexis Canada

Memberships

- International Anti-Counterfeiting Coalition (**IACC**) – Former Chair of the Social Networking Task Force - Internet Committee
- International Trademark Association (**INTA**)
 - 2022-2023 –Chair of the Online Counterfeiting Project Team – Anti-counterfeiting Committee
 - 2018-2019 - Chair of the Canada sub-committee of the Anti-counterfeiting Committee
- Intellectual Property Institute of Canada (**IPIC**)
 - 2020-2021 – Chair of the Internet and Technology Committee
- The Advocate’s Society
- Ontario Bar Association
- Canadian Bar Association

Education/Background

David S. Lipkus received his Juris Doctor from the University Of Detroit Mercy School Of Law in 2008. Mr. Lipkus received his BA in Honours Philosophy: Reasoning and Ethics in 2005 from The University of Western Ontario. Mr. Lipkus became a member of the New York State Bar in March, 2009. Mr. Lipkus was called to the Ontario Bar in January, 2010. He was a member of Kestenberg Siegal Lipkus LLP on a full-time basis since August, 2008, becoming a partner in January, 2015. Co-founded with Lorne Lipkus on January 1, 2023, Lipkus Law LLP commenced providing legal services.