



No. S078309
Vancouver Registry

Between:

CANWEST MEDIAWORKS PUBLICATIONS INC.

Plaintiff

and:

HORIZON PUBLICATIONS LTD., GARTH LEDDY,
MORDECAI BRIEMBERG, GORDON MURRAY,
CAREL MOISEIWITSCH, JOHN DOE #2,
JOHN DOE #3, JANE DOE #2 and JANE DOE #3

Defendants

NOTICE OF MOTION

TO: The Defendants Gordon Murray and Carel Moiseiwitsch

AND TO: Their Solicitors

TAKE NOTICE that an application will be made by the Plaintiff to the presiding judge at the Courthouse at 800 Smithe Street, in the City of Vancouver, in the Province of British Columbia at a date and time to be set for the following Order:

(a) The style of cause be amended to read:

No. S078309
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

Between:

CANWEST MEDIAWORKS PUBLICATIONS INC.

Plaintiff

And:

GORDON MURRAY, CAREL MOISEIWITSCH, JOHN DOE #2,
JOHN DOE #3, JANE DOE #2 and JANE DOE #3

Defendants

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- (b) that the plaintiff be granted leave to file a Second Further Amended Writ of Summons and Statement of Claim in the form attached hereto as Schedule "A"

The Applicant will rely on Rules 24 of the *Rules of Court*.

In support of this application, counsel for the Plaintiff will rely upon:

- (a) the pleadings filed in this matter;
- (b) the Affidavit of Stephanie Fong #3, sworn February 2, 2009; and
- (c) such further and other materials as counsel may advise and this Honourable Court may permit.

The Applicants estimate that the application will take ten minutes to be heard.

If you wish to receive notice of the time and date of hearing or to respond to the application, you must, within the proper time for response,

- (a) deliver to the applicant
 - (i) 2 copies of a response in Form 124, and
 - (ii) 2 copies of each of the affidavits and other documents, not already in the court file, on which you intend to rely at the hearing, and
- (b) deliver to every other party of record
 - (i) one copy of a response in Form 124, and
 - (ii) one copy of each of affidavit and other document, not already in the court file, on which you intend to rely at the hearing.

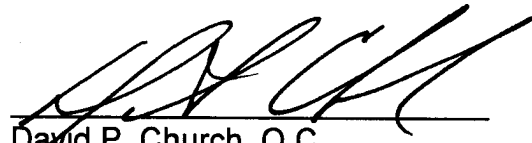
TIME FOR RESPONSE

If the application is for a final judgment under Rule 18A, the response must be delivered on or before the 11th day after the delivery to you of the Notice of Motion. In all other cases, the response must be delivered on or before the 8th day after the later of

- (a) the last date fixed for entry of appearance by you, and

(b) the date on which the notice of motion was delivered to you.

Dated: February 2, 2009

A handwritten signature in black ink, appearing to read 'D.P. Church', written over a horizontal line.

David P. Church, Q.C.
CHURCH & COMPANY
Solicitor for the Plaintiff

Vancouver, BC V5L 1X5

Carel Moiseiwitsch
Unit C, 2237 East Pender Street
Vancouver, BC V5L 1X5

JOHN DOE #2
(address unknown)

JOHN DOE #3
(address unknown)

JANE DOE #2
(address unknown)

JANE DOE #3
(address unknown)

ELIZABETH THE SECOND, by the Grace of God, of the United Kingdom, Canada and Her other Realms and Territories, Queen, Head of the Commonwealth, Defender of the Faith,

To the Defendants:

TAKE NOTICE that this action has been commenced against you by the Plaintiff for the claims set out in this Writ.

IF YOU INTEND TO DEFEND this action, or if you have a set off or Counterclaim that you wish to have taken into account at the trial, YOU MUST

- (a) GIVE NOTICE of your intention by filing a form entitled "Appearance" in the above registry of this court at the address shown below, within the Time for Appearance provided for below and YOU MUST ALSO DELIVER a copy of the "Appearance" to the Plaintiffs' address for delivery, which is set out in this Writ; and
- (b) if a Statement of Claim is provided with this Writ of Summons or is later served on you or delivered to you, FILE a Statement of Defence in the above registry of this court within the Time for Defence provided for below and DELIVER a copy of the Statement of Defence to the Plaintiffs' address for delivery.

YOU OR YOUR SOLICITOR may file the "Appearance" and the Statement of Defence. You may obtain a form of "Appearance" at the registry.

JUDGMENT MAY BE TAKEN AGAINST YOU IF

- (a) YOU FAIL to file the "Appearance" within the Time for Appearance provided for below, or

- (b) YOU FAIL to file the Statement of Defence within the Time for Defence provided for below.

TIME FOR APPEARANCE

If this Writ is served on a person in British Columbia, the time for Appearance by that person is 7 days from the service (not including the day of service).

If this Writ is served on a person outside British Columbia, the time for appearance by that person after service, is 21 days in the case of a person residing anywhere within Canada, 28 days in the case of a person residing in the United States of America, and 42 days in the case of a person residing elsewhere [or, if the time for appearance has been set by order of the court, within that time].

TIME FOR DEFENCE

A Statement of Defence must be filed and delivered to the Plaintiff within 14 days after the later of

- (a) the time that the Statement of Claim is served on you (whether with this writ of summons or otherwise) or is delivered to you in accordance with the Rules of Court, and
- (b) the end of the Time for Appearance provided for above.

(1)	The address of the registry is: 800 Smithe Street Vancouver, BC V6Z 2E1
(2)	The plaintiff's' address for delivery is: Church & Company 900 - 1040 West Georgia Street Vancouver, BC V6E 4H1 Attention David P. Church
(3)	The name and office address of the plaintiffs' solicitor is: same as above

The plaintiff's claim is set out in the Statement of Claim, which is filed and served herewith.

Dated: _____, 2009

David P. Church, Q.C.
CHURCH & COMPANY
Solicitors for the Plaintiff

STATEMENT OF CLAIM

1. The plaintiff is a media company that owns, among other things, the Vancouver Sun newspaper published in Vancouver, British Columbia. The plaintiff has an address in British Columbia at Granville Square, 200 Granville Street.

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3. ^
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4. ^
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- 4A. The defendant Gordon Murray ("Murray") has an address at Unit C, 2237 East Pender Street, Vancouver, BC, V5L 1X5. Murray is an IT specialist and the registrant/webmaster of the website known as ism-vancouver.org. ISM Vancouver purports to be the Vancouver affiliate of the International Solidarity Movement and holds itself out as a group of direct activists in support of Palestine.

5. The defendants John Doe #2 and John Doe #3 have addresses unknown to the plaintiff. Each of these defendants has a relationship, directly or indirectly, with one or more other named defendants and is a participant, directly or indirectly, in the other defendants' activities.

- 5A. The defendant Carel Moiseiwitsch ("Moiseiwitsch") has an address at Unit C, 2237 East Pender Street, Vancouver, BC, V5L 1X5. Moiseiwitsch is an artist/comic illustrator. Moiseiwitsch is a member of ism-vancouver.org.
6. The defendants Jane Doe #2 and Jane Doe #3 have addresses unknown to the plaintiff. Each of these defendants has a relationship, directly or indirectly, with one or more other named defendants and is a participant, directly or indirectly, in the other defendants' activities.
7. The plaintiff publishes the Vancouver Sun six days a week in hard copy in British Columbia and enjoys a circulation of approximately 200,000. Further, the Vancouver Sun is also published on the Vancouver Sun website, www.vancouversun.com, which is typically viewed by 400,000 readers a month.
8. The Vancouver Sun has published continuously in Vancouver since 1912. The Vancouver Sun logo, layout and other visual identifiers of the newspaper have been used in connection with the newspaper and to distinguish it from other newspapers. The logo is distinctive and known to the public as being indicative of the plaintiff's newspaper.
- 8A. The layout and design of the Vancouver Sun logo and of the general format of the Vancouver Sun constitute original artistic work as defined in the Copyright Act, R.S.C. 1985, C-42 and amendments thereto (the "Copyright Act"). Further, the

plaintiff is the owner of copyright in the layout and design of the Vancouver Sun logo and in the general format of the Vancouver Sun (the "Vancouver Sun Copyright").

9. The public in Canada, and particularly in British Columbia and western Canada, have come to recognize the Vancouver Sun publication as being distinctive and there is goodwill or reputation attached to the name and to the usage of it as a daily newspaper and media outlet in the mind of the purchasing public in Canada, and particularly in British Columbia and western Canada.

10. ^

11. ^

12. ^

12A. In 2002 the defendants Murray and Moiseiwitsch engaged in the creation, publication and distribution of a fake edition of the Vancouver Sun (the "2002 Fake Newspaper"). ^ In or about February, 2002, the defendants Murray and Moiseiwitsch operating under the name Guerilla Media, caused approximately 20,000 editions of the 2002 Fake Newspaper to be distributed in British Columbia.

12B. ^

13. In or about early ^ June ^ 2007, the defendants ^ authored, and printed ^ a fake edition of the Vancouver Sun ^ (the "fake newspaper"). On June 7, 2007 the defendants distributed approximately 12,000 hard copies of the fake newspaper in Vancouver, and Victoria, including on the campus of the University of British Columbia. Further, the defendants caused the content of the fake newspaper to be published on a website, which the defendants created, www.vancouversun.7p.com.

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14. ^
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15. ^
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16. ^ The defendants, or one or more of them, carried out or caused to be carried out the following ^ acts: ^

- (a) creating the text and layout of the fake newspaper;
- (b) ^ utilizing the original design and layout of the Vancouver Sun logo and the general layout of the Vancouver Sun without the plaintiffs' permission thereby violating the Vancouver Sun Copyright;
- (c) utilizing the name Vancouver Sun for the publication of the fake newspaper and, in essence, taking the plaintiff's identity for the purpose of lending credibility to the statements in the fake newspaper;
- (d) printing the fake newspaper;
- (e) distributing 12,000 copies of the fake newspaper in Vancouver and Victoria;

- (f) breaking into Vancouver Sun newspaper boxes and wrapping copies of the Vancouver Sun newspaper in the fake newspaper;
- (g) publishing the fake newspaper on a website created by the defendants, or some of them, www.vancouversun.7p.com;
- (h) ^
- (i) publishing a press release, on June 7, 2007, advertising the activity that the ^ defendants were involved in and further criticizing the plaintiff ^;
- (j) under the pseudonym "Earl Zatz Handel" conducting an interview on a Vancouver radio station, and, in that interview, further publishing the existence of the fake newspaper and further criticizing the plaintiff ^; and
- (k) providing those who contacted the email address and phone number, provided in the defendants' press release, with further commentary criticizing the plaintiff ^.

17. The defendants threaten and intend to repeat the acts complained of.

18. ^

19. ^ The actions of the defendants, and each of them, in publishing the fake newspaper, and republishing the content thereof on the www.vancouversun.7p.com website ^, constitute a misrepresentation and passing off of the fake newspaper as that of the plaintiff, leading the public to believe there was an association between the plaintiff and the fake newspaper.

20. As a result of the acts carried out by the defendants, or one or more of them as particularized in paragraph 16 of the statement of claim, ^ the plaintiff has suffered loss and damage and continues to suffer loss and damage including loss of goodwill and depreciation of the plaintiff's goodwill in its trademark.
21. Further and in the alternative, the plaintiff claims that, as the acts described in paragraph 16 of this statement of claim are independently actionable as passing off, ^ and breach of copyright, ^ the plaintiff claims damages, in relation to those acts.
22. The plaintiff pleads and relies on the provisions of section 7 of the Trade-marks Act, R.S. 1985, c. T-13, as well as the common-law of British Columbia in relation to the tort^ of passing off. ^
- 22A. The plaintiff pleads and relies on the provisions of sections 2, 3, 27 and 34 of the Copyright Act and claims damages pursuant to section 38.1 of the Copyright Act.
23. ^ As against the defendants Murray and Moiseiwitsch, the plaintiff claims punitive damages arising from the actions of Murray and Moiseiwitsch who in publishing and distributing the fake newspaper in 2007 repeated conduct similar to the publication and distribution of the 2002 Fake Newspaper.
24. The plaintiff claims aggravated damages. The facts on which the plaintiff relies in support of this claim include the acts ^ set in paragraph 16 of this Statement of Claim and, in particular, the acts of republication of the fake newspaper, the

issuance of a press release regarding the fake newspaper and the giving of interviews relating to the publication of the fake newspaper.

25. The plaintiff claims against the defendants ^ as follows:

- (a) a declaration that the defendants have passed off, both at common law and as prohibited by section 7(b) of the Trade-marks Act, R.S. 1985, c. T-13, the fake newspaper as and for that of the plaintiff;
- (aa) a declaration that the defendants have infringed the Vancouver Sun copyright in breach of the Copyright Act;
- (b) an injunction restraining the defendants, and each of them, either by themselves, their servants, agents or otherwise from:
 - (i) creating, printing, or distributing any publications, including on any websites, bearing the plaintiff's name and trade marks and in a getup similar to the plaintiffs and represented as the plaintiff's wares;
 - (ii) passing off or attempting to pass off or causing, enabling, or assisting others to pass off or to attempt to pass off fake newspapers or any other publications as and for the publications of the plaintiff, including the Vancouver Sun;
 - (iiA) infringing the plaintiff's rights in connection with all works for which the plaintiff enjoys copyright protection, including the Vancouver Sun Copyright;
 - (iii) ^

- (iv) falsely suggesting any association between the defendants' fake newspaper, or other publication including on the internet, and the Vancouver Sun; and
- (v) restraining the defendants, and each of them, by themselves, their servants, agents or otherwise, from continuing with the acts alleged in paragraph 13 of this statement of claim, or acts similar in kind to those acts;
- (c) an order for delivery up to the plaintiff of all material of any kind in the possession, custody or control of the defendants or any of them as may offend the injunction sought in sub-paragraph (b) above;
- (d) general damages;
- (e) ^ statutory damages for copyright infringement pursuant to s.38.1(1) of the Copyright Act;
- (f) punitive damages;
- (g) aggravated damages;
- (h) special costs, or alternatively costs; and
- (i) such further and other relief as the court deems just.

PLACE OF TRIAL: Vancouver, British Columbia

DATED: at Vancouver, British Columbia, this ____ day of ^ _____, 2009

David P. Church, Q.C.
CHURCH & COMPANY
Solicitors for the Plaintiff