

**IN THE SUPREME COURT OF JUDICATURE OF JAMAICA
IN COMMON LAW**

CLAIM NO. HCV 1851 OF 2005

BETWEEN	SPORTSMAX LIMITED	CLAIMANT
AND	ENTERTAINMENT SYSTEMS LIMITED	1st DEFENDANT
AND	ALLIED CABLEVISION LIMITED	2nd DEFENDANT
AND	S.A.U.C.E. COMMUNICATION NETWORK LIMITED	3rd DEFENDANT
AND	TELSTAR CABLE LIMITED	4th DEFENDANT
AND	OMNI CABLE SERVICES LIMITED	5th DEFENDANT
AND	LOGIC ONE LIMITED	6th DEFENDANT
AND	D & L CABLE AND SATELLITE LIMITED	7th DEFENDANT
AND	OLIVER ELECTRONICS ENGINEERING LIMITED	8th DEFENDANT
AND	STARCOM CABLEVISION LIMITED	9th DEFENDANT
AND	ABACUS COMMUNICATIONS LIMITED	10th DEFENDANT

Dave Garcia and Sanya Young for Claimant instructed by Myers, Fletcher & Gordon.

Maurice Manning and Georgia Gibson-Henlin for Defendants instructed by Nunes, Scholefield, DeLeon & Co.

Heard: July 19 and July 28, 2005 and August 22, 2005.

Rattray, J:

The Claimant is a sports programme content provider which offers its programme of sports on the SportsMax channel on each of the Defendants' Subscriber Television Services. As holders of Subscriber Television Licences under the Broadcasting and Radio Re-Diffusion Act, the Defendants transmit video programming or other programming services to subscribers for a fee. Customarily referred to as cable operators, the Defendants operate within the parishes of Kingston, St. Andrew and St. Catherine.

Between the months of May and June 2004, SportsMax entered into written agreements with the Defendants under which, inter alia, the Defendants would broadcast the sporting offerings of the Claimant to their subscribers as a paid subscription service with the cost of subscriptions to be shared on an agreed fee structure.

With the advent of Hurricane Ivan in September, 2004, and the resultant loss of electricity, damage to the distribution systems of the cable operators and a significant decrease in subscriptions being paid, SportsMax discontinued the agreements with the Defendants. Thereafter, it offered the

SportsMax channel to the Defendants free of charge, for distribution to their subscribers and earned its revenue instead from sponsors.

The appetite of the Jamaican public for the viewing of and exposure to sporting activities, both local and international is well known. It is perhaps based on this knowledge that SportsMax embarked upon this entrepreneurial endeavour.

SportsMax contends that its parent company, International Media Content (IMC) is the holder of broadcast rights for select National Basketball Association (NBA) games for the 2004/2005 and 2005/2006 U.S basketball seasons. It further contends that through IMC, it paid significant sums of money to purchase the exclusive rights to be able to broadcast the said NBA games in Jamaica, as well as other sporting events, in fulfillment of its mandate as a sports content provider. These sporting events include the English Premier League through to 2007, the FA Cup through to 2008, FIFA football tournaments through to World Cup 2006, the home series of the English Cricket team through to 2010, West Indies away matches through to 2010 and Jamaica Cricket Association's Super Cup through to 2006. It has also secured the annual rights to other sporting events such as track and field and golf.

Several notices from SportsMax to the cable operators in this action were exhibited to the Affidavit of Oliver McIntosh sworn to on the 1st day of

July, 2005, reminding them of the exclusive rights of SportsMax to broadcast certain NBA games in Jamaica. To the notices were also attached the broadcast schedules for the games and SportsMax requested that in accordance with their exclusive rights, viewer access to the said games be blocked out on the Defendants' other channels. Despite these notices, several of the Defendants televised a game on ESPN to which SportsMax had sole broadcast rights.

On May 18, 2005, SportsMax was informed by viewers that its channel was no longer on the air. In his said Affidavit, Oliver McIntosh asserts that upon enquiry he was told by Desmond Lee of Entertainment Systems Limited and Mario Francis of Logic One Limited, the 1st and 6th Defendants herein, that the SportsMax channel was taken off the air due to a collective decision taken by the cable operators in this action. This decision was based on their belief that SportsMax was responsible for the issuing of a letter from ESPN to the said cable operators demanding that they cease and desist from illegally broadcasting the US domestic ESPN channel, which is not available for lawful broadcast outside the United States, as the cable operators had acquired no legal right to broadcast same.

Oliver McIntosh in his Affidavit further asserts that in an attempt to resolve this dilemma, a meeting was held on May 19, 2005, at the offices of the 1st and 6th Defendants to discuss the possibility of having the channel

turned back on. However on May 26, 2005, he was advised by representatives of the said cable operators that the SportsMax channel would be turned on only until the end of June, 2005, and thereafter it would be permanently turned off.

Other meetings were held with representatives of several of the Defendants on May 27, 2005, and June 22, 2005, in an attempt to discover a possible way forward for all the parties concerned, the latter of which meetings in Mr. McIntosh's view, seemed positive with respect to the continuation of a business relationship with SportsMax. However, that expectation was dashed on the receipt by SportsMax of an e-mail from Clyde V. Paul of Allied Cablevision Limited, the 2nd Defendant, on behalf of all the Defendants, stating that the decision of the Defendants to remove the SportsMax channel from their respective networks remained unchanged. The two items of concern for the Defendants as reflected in the said e-mail were;-

- (i) The continued overlapping of existing programme content which would lead to future cannibalization of existing programme and content detrimental to their respective operations, as well as their request of SportsMax of an indication of their future plans as regards programming:

and

- (ii) The request for tangible proposals to ensure that the Defendants would benefit from the relationship, to compensate for their investments, the interest risks involved and to offset the costs of managing the relationships as they move forward.

As regards the overlapping of programme content, Oliver McIntosh's response was that in every instance where there is such an overlap, SportsMax having bought the rights to show the said content had the exclusive right to have the contents shown on its channel. Further, the Defendants had no authority to broadcast those programmes in Jamaica on any channel other than SportsMax, and any such showing in breach of SportsMax's exclusive rights was unlawful. In any event, he contended that the Defendants' subscribers would be at no disadvantage were the programmes to be blocked on the other channels, as they would still have lawful access to those programmes on the SportMax channel. Mr. McIntosh was not prepared however, to disclose to the Defendants in advance the content of programmes for which it would be negotiating, nor the parties with whom such negotiations would be held, in light of the competitive bidding market which could include cable operators.

In addressing the issues of the cost factor and compensation, Oliver McIntosh proposed, in his e-mail in response of June 29, 2005, that all parties could benefit by offering the SportsMax channel at a fee to the

Defendants' subscribers, which fee could be shared on a basis to be agreed upon among themselves. It did not appear however that the parties were able to bridge the divide that separated them.

Oliver McIntosh alleges in his Affidavit that with the exception of Oliver Electronics Engineering Limited, the 8th Defendant and Starcom Cablevision Limited, the 9th Defendant, the other eight (8) Defendants are the only licensed cable operators for the parishes of Kingston and St. Andrew. When those two companies are taken into account collectively with the other cable operators named in this suit, Mr. McIntosh further alleges that the extent of subscriber based television services provided by these Defendants is such that they effectively control the supply of cable services to the markets of Kingston, St. Andrew and St. Catherine, in respect of which they are licensed. He estimates that these markets represent over sixty percent (60%) of the licensed cable subscriptions islandwide based on market surveys.

When faced with what was described as "the collective decision" of the Defendants to turn off the SportsMax channel and its likely exclusion from the markets described as a consequence, the substantial financial loss and damage to its reputation which would follow, the Claimant sought relief by turning to the Court.

By Claim Form and Particulars of Claim dated 1st July, 2005, SportsMax claimed a declaration that the agreement between the Defendants to collectively pull the Claimant's channel from their channel offerings to subscribers is anti-competitive and in breach of the Fair Competition Act, damages for breach of that statute as well as injunctive relief. On that date, on the Claimant's ex parte application, the Honourable Mr. Justice Pusey (Ag) granted an Interim Injunction restraining the Defendants until July 29, 2005, from preventing or diminishing the quality of viewer access to the Claimant's channel and from removing the Claimant's channel from their channel offerings to subscribers.

The application before this Court is for the further consideration of the Claimant's application for injunctive relief pursuant to Rule 17.4 of the Civil Procedure Rules 2002. Let me pause at this point to indicate that no Affidavit has been filed by any of the Defendants contradicting the allegations raised in the several Affidavits filed on behalf of SportsMax, except an Affidavit of Search sworn to on the 13th day of July, 2005, to which reference will later be made. No law obliges a party to file an Affidavit in response, but in the absence of such an Affidavit, the allegations of a Claimant stand unchallenged, save and except where on the face of the Affidavits filed, the factual allegations are contradictory or not credible, or

where the legal issues raised in response show such allegations to be incorrect or baseless in law.

The Defendants' position is that SportsMax is unable to clear the first hurdle in its attempt to obtain interlocutory injunctive relief. They say there is no serious issue to be tried. A failure to clear this hurdle, although not the end of this legal race, would bring to an abrupt finish this aspect of the Claimant's interlocutory excursion. In support of this contention, the Defendants submit that any ownership rights to broadcast the programmes in question rests not with SportsMax, but, if at all, with its alleged parent company IMC, which entity is not a party to this action. They further submit that there is no evidence to support the claim by SportsMax that it is a subsidiary of IMC, its alleged parent company, which allegation has yet to be proved nor has it shown that IMC has any rights to the products in issue.

The first Affidavit of Oliver McIntosh indicates without contradiction, that IMC is the holder of broadcast rights of certain select NBA games and that SportsMax paid significant sums of money through IMC to purchase those exclusive rights to broadcast those games in Jamaica. It also indicates that substantial sums have been paid by SportsMax to obtain exclusive rights to broadcast other sporting events. At this stage of the proceedings, in the absence of Affidavit evidence to the contrary, the assertions of ownership of

such rights remain unchallenged. The question of whether those rights have been established or not is for the Judge at trial.

On the issue of whether SportsMax is a subsidiary of IMC, the Defendants relied on the Affidavit of Search sworn to on the 13th July, 2005, by Radcliffe Nelson, a legal clerk who conducted a search of the Claimant company at the Registrar of Companies. The Annual Return for the year ending the 31st December, 2004, revealed that the shareholders in SportsMax Limited were Oliver McIntosh and IMC, each holding one share. Based on this information, the Defendants contend that there is no evidence that the requirements for one company to be deemed a subsidiary of another under Section 151 of the Companies Act have been met. Section 151(1)(a)(ii) of that Act deems a company a subsidiary of another, if that other company holds more than half in value of its equity share capital, which is statutorily defined as its issued share capital.

Olive McIntosh in his 4th Affidavit sworn to on the 19th July, 2005, responded that the share held by him in SportsMax is held as nominee for IMC. As such, Counsel for SportsMax, Mr. Garcia argues that by virtue of Section 151(3)(b)(ii) of the Companies Act, any shares held by a person as nominee for another are to be taken into account in determining whether the company is a subsidiary of that other. In light of the circumstances of the present matter, Counsel further argues that the share held by Oliver

McIntosh is to be treated as being held by IMC, the holder of the only other issued share in SportsMax, thereby making SportsMax a wholly owned subsidiary of IMC.

Counsel for the Defendants challenge Mr. McIntosh's claim of holding the share as nominee for IMC and describe it as a mere assertion without documentary or other proof. Clearly this is an issue to be thrashed out at trial after full discovery and the hearing of viva voce evidence. In any event, the Claimant says that its case is not dependent upon a parent/subsidiary relationship. Its claim against the Defendants is for breaches of the Fair Competition Act committed against SportsMax with respect to their actions affecting the delivery of its sports content material in Jamaica. To attempt to resolve these issues at this juncture would be to trespass on the province of the trial Judge at a stage where the evidence is incomplete.

The Defendants also object to the continuation of the Injunction granted by the Honourable Mr. Justice Pusey (Ag) on the ground that SportsMax has not disclosed that it has any legal or equitable right which requires protection by way of injunction until final determination at trial. They say the Claimant has no contractual relationship with any of the Defendants and that its claim is essentially one concerning money. Counsel

for the Defendants cite several authorities which emphasize the well known legal principle that an injunction is not in itself a cause of action.

They refer to and rely on the dicta of Lord Diplock in **The Siskina** (1977) 3 All E.R. 803 at page 824, where he opined,

“A right to obtain an interlocutory injunction is not a cause of action. It cannot stand on its own. It is dependent on there being a pre-existing cause of action against the defendant arising out of an invasion, actual or threatened by him of a legal or equitable right of the plaintiff for the enforcement of which the defendant is amenable to the jurisdiction of the court. The right to obtain an interlocutory injunction is merely ancillary and incidental to the pre-existing cause of action.”

I understand the Defendants’ argument to be that no contractual or other legal right having been alleged and no equitable interest having been claimed by SportsMax against the Defendants, a serious issue does not arise for this Court to go further to consider other principles relevant to the granting of injunctive relief. SportsMax has failed, in the Defendants’ view to get out of the blocks.

Counsel for SportsMax in answer to this ground of objection asserts that his client has established that it has a right – the right to protection from breaches by the Defendants of the Fair Competition Act. In other words, Counsel submits that the collective decision of the Defendants to pull the Claimant’s channel from their respective networks, in the circumstances of the present case is anti-competitive behaviour frowned upon by legislation

and amounts to a breach of its statutory rights for which it is entitled to protection by way of injunction.

The authors of the textbook **Commercial Litigation: Pre-Emptive Remedies**, 4th edition at sub paragraph A1-017, when dealing with the grant of relief by way of interim injunction have stated: –

“ An interim injunction is not in itself a cause of action and normally it will only be granted to protect temporarily a right, the infringement of which gives rise to a cause of action or *to prevent breach of the law.*” (my emphasis)

They also go on to mention the dicta of Lord Diplock in **The Siskena** case, already referred to in this Judgment.

In Jamaica, the power of the Court to grant an injunction is statutorily enshrined in the Judicature (Supreme Court) Act, Section 49(h) of which reads:-

“... An injunction may be granted.... by an interlocutory order of the Court, in all cases in which it appears to the Court to be just or convenient that such order should be made; and any such order may be made either unconditionally or upon such terms and conditions as the Court thinks just,...”

The wording of this section is similar to Section 37(1) of the English Supreme Court Act 1981, the scope and extent of which was considered by Lord Brandon of Oakbrook in the House of Lords case of **South Carolina Insurance Company vs. Assurantie Maatschappij ‘de Zewin Provincien’ NV** reported at (1986) 3 All ER 487, to which passing mention was made by

the Defendants in their written submissions. At page 495, the learned Law Lord stated;

“In considering the question which I have formulated, it will be helpful in the first place to state certain basic principles governing the grant of injunctions by the High Court. The first basic principle is that the power of the High Court to grant injunctions is a statutory power confirmed on it by section 37(1) of the Supreme Court Act, 1981, which provides that ‘the High Court may by order (whether interlocutory or final) grant an injunction...in all cases in which it appears to the court to be just and convenient to do so’ ... The second basic principle is that, although the terms of section 37(1) of the 1981 Act and its predecessors are very wide, the power conferred by them has been circumscribed by judicial authority dating back many years. The nature of the limitations to which the power is subject has been considered in a number of recent cases in your Lordships’ House. ... The effect of these authorities...can be summarized by saying that the power of the High Court to grant injunctions is, ... limited to two situations. Situation (1) is when one party to an action can show that the other party has either invaded, or threatens to invade, a legal or equitable right of the former for the enforcement of which the latter is amenable to the jurisdiction of the Court. Situation (2) is where one party to an action has behaved, or threatens to behave in a manner which is unconscionable.”

In that case however, Lord Goff of Chievely, although finding himself in agreement with the conclusion reached by Lord Brandon, expressed certain reservations in the following terms;-

“I am reluctant to accept the proposition that the power of the court to grant injunctions is restricted to certain exclusive categories. That power is unfettered by statute; and it is impossible for us now to foresee every circumstance in which it may be thought right to make the remedy available.”

Another of the Law Lords in that case, Lord Mackay of Clashfern also agreed with the reservations expressed by Lord Goff as to the restrictions on the statutory power of the Court to grant injunctions.

Similar sentiments have also been expressed in other judicial decisions. In the case of **Bayer A.G. vs Winter** 1986 1 W.L.R. 497, Fox L.J. declared

“Bearing in mind we are exercising a jurisdiction which is statutory, and which is expressed in terms of considerable width, it seems to me that the Court should not shrink, if it is of opinion that an injunction is necessary for the proper protection of a party to the action, from granting relief, notwithstanding it may, in its terms be of a novel character.”

Lord Mustill in the case of **Channel Tunnel Group Limited vs Balfour Beatty Construction Limited** (1993) AC 334 was also not prepared to accept in total the dicta of Lord Brandon in the **South Carolina** case and he said, *inter alia*,

“... I prefer not to engage the question whether the law is now firmly established in terms of Lord Brandon’s statement, or whether it will call for further elaboration to deal with new practical situations at present unforeseen. For present purposes it is sufficient to say that the doctrine of the *Siskina*, put at its highest, is that the right to an interlocutory injunction cannot exist in isolation, but is always incidental to and dependent upon the enforcement of a substantive right, which usually although not invariably takes the shape of a cause of action.”

However even the requirement of a cause of action to ground a claim

for an injunction is not an absolute necessity as shown in the case of **Re Oriental Credit Limited** (1988) 2 W.L.R. 172. There, a director of a company who left the jurisdiction before the company went into liquidation was ordered to attend for private examination by the registrar. In anticipation of his return to the jurisdiction, the liquidators obtained an injunction restraining him from leaving until the completion of the examination. On an application to discharge the injunction, the Court held that the order to attend neither created a cause of action nor any legal or equitable right in the liquidators. That notwithstanding that the liquidators had no enforceable right to be protected by an injunction, the Court had a wide power under section 37 of the Supreme Court Act 1981 to ensure that its order were complied with and therefore the Court had acted within its jurisdiction in issuing the injunction.

The power of the Court to grant an injunction as imposed by statute is indeed very wide. In exercising that power, an obligation is placed on the Court to ensure that it is satisfied that the circumstances before it are such that it is just or convenient for the injunction sought to be granted. I too am of the view that the Courts' power to grant an injunction is unfettered by statute and I am hesitant to accept that that power is limited only to certain categories. In a rapidly changing environment spurred on by the speed of technological advancement, the advent of new legislation and the emergence

of new rights, a Court ought to be slow to apply self imposed restraints on its power to act, when the circumstances of a case may warrant or cry out for such action.

It must be remembered that the application before this Court is for an interlocutory injunction. As stated by Lord Diplock in **American Cyanamid Co vs Ethicon Limited** (1975) 1 All E.R. 504 at 509;

“... When an application for an interlocutory injunction to restrain a defendant from doing acts alleged to be in violation of the plaintiff’s legal rights is made on contested facts, the decision whether or not to grant an interlocutory injunction has to be taken at a time when ... the existence of the right or the violation of it, or both, is uncertain and will remain uncertain until final judgment is given on the action.”

I am satisfied that there exists in the Claimant in the present case, as has been alleged, a right for which it is entitled to seek the protection of the Court. Any Order made at this stage however is neither final nor conclusive as to a party’s rights. Nor is the judge at trial bound to accept any finding made on this interlocutory application.

The claim by SportsMax is that the agreement among the Defendants to pull the Claimant’s channel from their channel offerings to subscribers is anti-competitive and in breach of Sections 17, 18 and 35 of the Fair Competition Act. Section 17 relates to agreements containing provisions which have the effect of lessening competition in a market.

The Defendants contend that competition law is about prices, products, supply and demand within the confines of a market. Any alleged agreement must therefore affect a market which has two dimensions – product and geographic. They further contend that any claim which does not identify both dimensions of the market that are affected by the alleged actions of the Defendants must fail, as there is no basis on which the Court can exercise its discretion to determine whether or not there is a serious issue to be tried.

The evidence of the Claimant as contained in the Affidavits of Oliver McIntosh, to which no answer has been filed, indicates that the Defendants collectively provide subscriber based television services to the markets in Kingston, St. Andrew and St. Catherine, which markets are estimated to represent over 60% of the licensed cable subscriptions islandwide. A geographic market then seems to have been identified. With respect to the identification of a product, this case is concerned with the provision of sports content programming by way of cable services. Both dimensions of a market would seem, on the evidence before me, to have been made out.

Section 18 of the Fair Competition Act does not appear to make reference to any market. Instead, it speaks to a provision in an agreement being an exclusionary provision, if such agreement is entered into between persons of whom any two or more are in competition with each other, and

the effect of that provision is to prevent, restrict or limit the supply of goods or services from any particular person by all or any of the parties to the agreement. Any such agreement is deemed to be void.

It is conceded that SportsMax and the Defendants are not in competition with each other. The evidence of Oliver McIntosh also discloses that the Defendants themselves are not all in competition with each other. However, insofar as they are permitted by their licences to operate in select zones, the Claimant submits that the Defendants in those zones do compete with each other. The effect of their alleged collective decision would also have to be considered under this section.

Section 35 of the Act restricts any person from conspiring, combining, agreeing or arranging with another person to limit the supply of any service or otherwise restrain or injure competition unduly. I am of the view that the material before this Court raises serious issues to be tried with respect to the aforementioned sections of the Fair Competition Act.

The Defendants are holders of Subscriber Television Licenses under the Broadcasting and Radio Re-Diffusion Act and as such are regulated under the provisions of the Television and Sound Broadcasting Regulations made under the said Act. They submit that were the Court to make an Order the effect of which would be to direct them to carry the Claimant's channel,

that would cause them to be in breach of regulation 17(1)(c) of the aforementioned regulations which read:

“17 (1) A licensee who operates subscriber television service shall:-

- (c) not carry any local advertising other than advertisements transmitted on channels carrying national broadcasts”

They further submit that only entities with commercial broadcast licenses are permitted to carry local advertisements.

This submission is challenged by Counsel for the Claimant on the basis that that construction of the regulations is not supported by the Act and/or its regulations. One of the issues to be considered then is the interpretation of this piece of legislation and the regulations made thereunder.

The Claimant also alleges that there is no evidence to show that the Claimant’s channel carries local advertisements. They argue that the evidence before the Court refers to sponsorships from certain entities, but there is no evidence that these are advertisements, and further that if they are, there is no evidence that these advertisements are local.

An alternative submission was also advanced by SportsMax, that there is no evidence before the Court that it is not a channel carrying national broadcasts and it makes the distinction between national broadcasts and international broadcasts, both of which it carries on its channel. If this

allegation is found to be correct, they say the Defendants could not be held in breach of the regulations if they carry the Claimant's channel, which itself carries local advertisements.

What is of interest is that these issues of a possible breach of the said regulations by the Defendants were they to continue to carry the Claimant's channel on their networks, appear not to have been raised by them at any time prior to the institution of these legal proceedings. The concerns of the Defendants, as expressed in the e-mail from Clyde Paul, related to overlapping of existing programme content thereby causing the blocking of programmes on other channels and a compensation issue. Up to June 28, 2005, the Defendants appeared willing to have the matter resolved so that the parties would achieve a "win-win" position. However, the points raised by the Defendants, despite the delay in advancing same, and the responses made on behalf of the Claimant, call for a full deliberation on these issues by the Judge at the trial of this action.

Finally, the Defendants say that at the time the application for an injunction was made before the Honourable Mr. Justice Pusey (Ag), the Claimant's channel had already been pulled from the networks of all the Defendants except the 4th and 6th Defendants. As such they contend that the injunction should not be continued insofar as it purports to bind these other Defendants. In answer to the Court as to which Defendants are currently

carrying the Claimant's channel, Counsel for the Defendants quite properly advised that all the Defendants had complied with the Order of the Court. Having submitted to the jurisdiction of the Court, I am of the view that all the Defendants are to be bound by the ruling made on this application.

Having carefully considered the Affidavit evidence, as well as the legal submissions diligently advanced by Counsel for the parties to this action, for which I am grateful, I do not believe that the issues raised by the Claimant are frivolous or vexatious. I am of the view that there are serious questions to be tried.

The next step to consider is whether damages would be adequate compensation for either Claimant or the Defendants and if so, whether the other party or parties would be in a financial position to pay such damages. On the evidence before me, it appears that damages would not adequately compensate the Claimant, as apart from substantial financial losses, the removal of its channel from the Defendants' networks would also seriously affect its business, its reputation as well as its relationships with present and future sponsors. In addition, there is no evidence before the Court that the Defendants are in a financial position to pay any damages that may be awarded, nor is there any evidence from the Defendants as to their financial status or any details thereof, on which any undertaking as to damages can be considered.

On the material before this Court, I find that the balance of convenience lies in favour of the continuation of the Injunction until the trial of this action.

It is therefore ordered that;

- (1) The Defendants be restrained, whether by themselves their servants or agents or otherwise howsoever from preventing or diminishing the quality of viewer access to the Claimant's channel or from removing the Claimant's channel from their channel offerings to subscribers until the trial of this action or until further Order.
- (2) The Claimant undertakes to abide by any order as to damages that the Court may make as a result of the granting and/or continuation of this Order.
- (3) Costs to be costs in the claim.
- (4) Leave to Appeal granted.