



[2024] JMCC Comm 22

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

COMMERCIAL DIVISION

CLAIM NO.SU2024CD00154

BETWEEN	VERTICAST MEDIA GROUP LTD	CLAIMANT
AND	DIGICEL (JAMAICA) LIMITED	1st DEFENDANT
AND	COLUMBUS COMMUNICATIONS JAMAICA LIMITED	2nd DEFENDANT
AND	CABLE AND WIRELESS JAMAICA LIMITED	3rd DEFENDANT

Mr Douglas Leys KC, Dr Delroy Beckford and Miss Jacqueline Cummings, instructed by Samuel Beckford for the claimant

Mr Maurice Manning KC , Mrs Allyandra Thompson and Ms Dionne Samuels, instructed by Nunes Scholefield Deleon & Co for the 1st Defendant

Mrs Denise Kitson KC and Mr Kevin Williams instructed by Grant Stewart Phillips for the 2nd and 3rd Defendants

Heard April 19, 2024

CORAM: JARRETT J

ORAL REASONS FOR DECISION

ON ORAL APPLICATION FOR INTERIM PROTECTION ORDER

1. On April 19, 2024, what was before me was the claimant's Urgent Notice of Application for Court Orders for Injunctive Relief filed on April 2, 2024, in which the following remedies are being sought: -
 - a. An interim and interlocutory injunction restraining the Defendants from breaching the Fair Competition Act, 1993, whether by themselves, their servants or their agents, or employees or otherwise by directly and/or indirectly conspiring and/or colluding or engaging in a concerted practice with each other which has had and is having the effect of substantially lessening competition or an exclusionary effect in a relevant market, namely the market for providing cable television channels for distribution on multi-subscriber cable television networks in Jamaica to multi-subscriber cable television operators in respect of live elite sport competitions.
 - b. An interim and interlocutory injunction restraining the Defendants from breaching the Fair Competition Act, 1993, whether by themselves, their servants or their agents or employees or otherwise by abusing or continuing to abuse their position of dominance or economic strength in the multi-subscriber cable television operator market by virtue of leveraging said dominance in the market for live broadcast of elite sports competitions, on multi-subscriber cable television platforms and in effect restricting the entry of the Claimant in said market, preventing or deterring the Claimant from engaging in competitive conduct in said market and/or limiting the production of goods or services to the prejudice of cable subscriber television consumers of significant live elite sports competition cable television channels.

- c. Additionally, and/or alternatively, an interlocutory injunction mandating the Defendants whether by themselves, their servants or their agents or employees or otherwise to grant access to their multi-subscriber cable television operator network to the Claimant to enable Claimant to provide live broadcasts of elite sporting competitions through the television channels in has created for that purpose.
 - d. The Claimant undertakes to abide by any order as to damages caused by the granting or extension of the injunction orders made herein.
 - e. Such other and/or further relief as this Honourable Court deems fit.
2. After refusing to accede to Mr Leys KC's request that I decline to place any reliance on the affidavits in response to the application filed by the defendants because they were filed out of time and with no attempts being made by the defendants to bring themselves in compliance with my earlier orders made on April 4, 2024, I granted the defendants' oral application for their affidavits to stand as properly filed. I also adjourned the hearing of the application to May 16, 2024, at 10:00am for 3 hours to give the claimant an opportunity to file affidavits in response to the affidavits of the defendants by April 30, 2024.
3. Mr Leys then made an oral application for the following "interim protection" order in favour of the claimant, pending the adjourned hearing: -

"That the defendants be restrained from infringing on the claimant's right to broadcast live elite sporting events until the resumption of the hearing or until your Ladyship's further order".

4. To grant the interim protection order sought by the claimant, I had to consider the very same threshold test for the granting of an interim interlocutory injunction. I had to be satisfied therefore that there is a serious issue to be tried whether the defendants are infringing the claimant's right to broadcast live elite sports events.
5. As I understand the claimant's pleadings, the pith and substance of its claim is that the defendants hold a dominant position in the market for providing live broadcast of elite sports competitions on multi subscriber cable television platforms and are abusing that dominance by refusing to deal, i.e., contract with the claimant to provide it access to their multi subscriber television operator network. The contention is also that by refusing to deal with the claimant, the defendants are restricting the claimant's entry in the market for creating cable television channels for distribution on multi subscriber cable television networks in Jamaica to multi subscriber cable television operators in respect of live elite sports competitions.
6. Additionally, the claimant contends in its pleadings, that it is being prevented from engaging in competitive conduct in the said market for creating cable television channels for distribution on multi subscriber cable television networks in Jamaica to multi subscriber cable television operators in respect of live elite sports competitions, due to the defendants' refusal to deal with it; and that by the defendants' aforesaid abuse of their dominance, competition has substantially lessened in the market for providing cable television channels for distribution on multi-subscriber cable television networks in Jamaica to multi subscriber cable television operators in respect of live elite sport competitions.
7. Having considered both the pleadings and the application, I took the view that there is no serious issue to be tried as to whether the defendants have infringed on the claimant's right to broadcast live elite sporting events. In any event, contrary to the submission of Mr Leys KC, the evidence does not indicate that the defendants have been engaging in conduct which amounts to a flagrant disregard for the claimant's broadcast rights to live elite sporting events. In fact, the evidence

suggests that where there has been any such breach, the defendants have taken corrective action and communicated to the claimant the measures taken to prevent further recurrence. It is for these reasons, that I refused to grant the interim protection order sought.

A Jarrett
Puisne Judge