

MICHAEL...
Vancouver, B.C.

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

ISOHUNT WEB TECHNOLOGIES, INC.

PLAINTIFF

AND:

FIMI GROUP CANADA INC. (doing business as EMI MUSIC CANADA) and as EMI MUSIC CANADA, UNIVERSAL MUSIC CANADA INC. (doing business as UNIVERSAL CANADA INC.), SONY BMG MUSIC (CANADA) INC., WARNER MUSIC CANADA INC. and CANADIAN RECORDING INDUSTRY ASSOCIATION

DEFENDANTS

STATEMENT OF DEFENCE

1. The Defendants admit the facts set out in paragraphs 1-3, 5-7, 30, 31, 32, 44, 46-47, 50, 53 and 55 of the Statement of Claim herein but, in specific answer to paragraph 4 of the Statement of Claim, say that the correct name for the defendant identified as Sony BMG Music (Canada) Inc. is Sony Music Entertainment Canada Inc.

2. Except as expressly set out in paragraph 1 above, the Defendants deny each and every other allegation in the Statement of Claim and put the Plaintiff to the strict proof thereof. The Defendants further deny that the Plaintiff is entitled to any of the remedies or relief sought in the Statement of Claim.

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3. The Defendants other than the Canadian Recording Industry Association (the "Maker Defendants"), are all leading makers of sound recordings.

4. IsoHunt Web Technologies, Inc. (the "Plaintiff") operates three widely-used Internet piracy websites, www.iso hunt.com, www.torrentbox.com and www.podtropolis.com (the "IsoHunt Websites"). The website located at www.iso hunt.com (the "IsoHunt.com Website") is commonly regarded as one of the most widely-used websites in the world to obtain unauthorized copies of copyright-protected works.

5. The IsoHunt Websites are commercial enterprises which together attract millions of users every day who come to the IsoHunt Websites and illicitly download copies of sound recordings, the copyright in which is owned or exclusively licensed by the Maker Defendants (the "Sound Recordings") as well as other copyright protected works and subject matter the copyright in which is owned by third parties ("other copyright content").

6. The IsoHunt Websites have been designed and are operated by the Plaintiff (and its president, founder and operating mind Gary Hung) with the sole purpose of profiting from copyright infringement which the Plaintiff actively encourages, promotes, authorizes, induces, aids, abets, materially contributes to and generates commercial revenue from. The Plaintiff and users of the IsoHunt Websites act together, in and as part of a file sharing community, to reproduce and distribute the Sound Recordings and other copyright content.

THE NATURE OF BITTORRENT SITES AND SERVICES

7. Through use of the IsoHunt Websites, which are commonly known as "BitTorrent" or "torrent" sites, users download (copy) content directly from the computers of other users

BitTorrent is a file sharing protocol that breaks files into small pieces of data, which is easier for users to share than if one large data file is shared. A user who has all the pieces is called a seeder, and a user collecting the pieces is called a leecher. A leecher may become a seeder by getting all the pieces. Leechers can also share the pieces of the file that they have received with other leechers. Leechers and seeders that share files are also called "peers".

8. BitTorrent technology commonly relies on a variety of mechanisms in order to accomplish the ultimate downloading of a given file, including: (1) a software application that users download, which is commonly referred to as a "client application"; (2) a BitTorrent client, a program designed to interpret the information in the dot-torrent file; (3) websites, also known as "torrent sites," which allow users to search for and select "download" files that they wish to download; and (4) servers, also known as "trackers," that are key to the download process. The only purpose of a dot-torrent file is to enable users to identify, locate and download a copy of the actual content item referenced by the dot-torrent file.

9. In a BitTorrent network, users of the network will often use a torrent site to search for and select the file that they wish to download. The initial seeder uses software to create a dot-torrent file which contains details of the file and the tracker(s) used to coordinate the downloading. These torrent sites maintain indexes of torrent files for downloading. The users may search, or, with respect to some sites, users may upload torrent files to share with others through the torrent site. Once the user selects a file, the tracker connects the seeder to the leecher and the downloading will begin from a number of host computers that possess the file or parts of the file simultaneously.

10. The client applications and trackers work together through the use of a "BitTorrent protocol" which standardizes the client-client and client-tracker communications. These components work together to allow individuals to download files using a torrent site and keep track of those downloads – as well as discover additional persons to download them from.

11. In this system, the downloading of the desired content is occurring from multiple source points at the same time and allows larger downloads to move expeditiously. During this simultaneous downloading process users form what is known as a "swarm," which allows for quick exchange of the downloading content.

THE ISOHUNT WEBSITES

12. The IsoHunt Websites are designed, developed, and operated by the Plaintiff to enable users to quickly and easily locate and download copies of the Sound Recordings and other copyright content. They provide users the ability to publicly exhibit and to distribute copyright content and provide guidance on uploading BitTorrent files to the IsoHunt Websites. They also provide users the ability to search for and download dot-torrent files and infringing copies of the Sound Recordings and other copyright content. The IsoHunt Websites collect, receive, index, and make available descriptions of content, including dot-torrent files, and provide access to BitTorrent trackers.

13. The vast majority of the downloading occurring through the IsoHunt Websites are reproductions of copyright infringing content including infringing copies of sound recordings (including the Sound Recordings), movies, TV programs, software, computer games, and books.

14. The IsoHunt Websites enable users to locate the copyright content they want to download in multiple ways. The Plaintiff provides a search box where users can type the name of a particular sound recording or other copyright content. It also provides organized directories that enable users to quickly and easily find the category of download they want (e.g., "Audio", "Music", "Video"). Via the "Global Search" facility, the IsoHunt Websites also provide lists of the latest sound recordings by listing them according to the best rated first, with an option to list by the date the dot-torrent was uploaded to the site (1 day, 7 days, 30 days or 6 months).

15. The IsoHunt Websites also offer users detailed descriptions of the content of files that are made available by users for download. The sound recording title, artist name, track number, song durations, file type and associated BitTorrent trackers are often all displayed on the individualized download pages on the IsoHunt Websites alongside the "Download" button which initiates users' downloads of the copyright content.

16. Users of the IsoHunt Websites click on a "download torrent" button or link on the websites that begins the downloading process. The downloading process works together with the users' client software to bring the desired content to the users' computers without any further action by the users. Once a user has clicked the "download torrent" button or link from the IsoHunt Websites, and previously installed BitTorrent client software on his or her computer, the desired content file begins downloading to the user's computer without any further action or input from the user. As a user starts to download a given content file, the user immediately becomes a source for future requests and downloads.

SUPER-INDEXING TECHNOLOGY

17. The Plaintiff also operates a "super-indexing" or "spidering" technology. The super-indexing technology used in conjunction with the IsoHunt.com Website is one reason for the popularity of this website over other BitTorrent indexing sites found on the Internet. This capability improves and expedites end users' searching for, accessing, and downloading of copyright content. Using its super-indexing/spidering technology, the IsoHunt.com Website searches the Internet for other dot-torrent files from a list of other BitTorrent indexing sites specifically selected and compiled by the Plaintiff.

18. Unlike common Internet search engines such as Google's general search engine which creates Internet directories using automated content-neutral means, the Plaintiff's super-indexing will only search specific sites selected by the Plaintiff for dot-torrent files of which the vast majority correspond to copyright infringing works or other subject matter, such as the Sound Recordings. These sites include well-known pirate sites such as the infamous "Private Bay" BitTorrent website, a website whose operators, to the knowledge of the Plaintiff, were found guilty in Sweden of aiding and abetting the making available of infringing copies of copyright works.

19. The Plaintiff specifically developed and configured the super-indexer functionality to ensure that the IsoHunt.com Website has the most comprehensive inventory of dot-torrent files that correspond to the latest and most desired infringing copies of the Sound Recordings and other copyright content. The Plaintiff's super-indexing technology ensures that the IsoHunt.com Website remains a premier destination to acquire unlicensed free copies of all the latest (and yet-unreleased) music sound recordings and other copyright content.

FOSTERING A COMMUNITY OF INFRINGERS

20. The Plaintiff uses the IsoHunt Websites to create and foster an active Internet distribution network of "file sharers" and file sharing activities. The Plaintiff and the IsoHunt Websites users act in concert and pursuant to a common design to engage in the unlicensed file sharing of the Sound Recordings and other copyright content. This file sharing includes the unlicensed reproduction, distribution (to such an extent as to affect the Market Defendants' proprietary and exhibition in public, of infringing copies of the Sound Recordings and other copyright content, as well as the authorization to carry out such activities.

21. The Plaintiff also actively authorizes, countenances, sanctions, approves, encourages, and induces users of the IsoHunt Websites to infringe the copyrights of the Market Defendants and other copyright owners. The Plaintiff also aids, abets and materially causes and contributes to this activity. In fact, the Plaintiff's entire business model is dependant on encouraging as many visits from copyright infringing-users to the IsoHunt Websites as possible to earn revenues from, for instance, selling advertising space. The availability of copyright content at and through the IsoHunt Websites is a major draw for users of the IsoHunt Websites and the Plaintiff derives substantial revenues there from.

22. The IsoHunt.com Website contains discussion forums where users are encouraged to discuss sound recordings they have downloaded, comment on the quality of sound recordings that are made available through all of the IsoHunt Websites, and request other sound recordings and works to be made available to the community.

23. Discussions on the IsoHunt.com Website forums hosted by the Plaintiff include commenting on the availability of sound recording "leaks" (where sound recordings appear on file sharing sites such as the IsoHunt Websites often before their commercial release) and methods of circumventing technical protection measures rights holders place on copyright content to protect them from unlicensed file sharing.

24. The Plaintiff also provides instructions on the use of BitTorrent technology in the forums, provides instructions to users on avoiding detection from copyright holder groups, implements measures to avoid indexing "fake" copies of copyright-protected materials on the IsoHunt Websites, and promotes the use of their BitTorrent trackers from the main page of the IsoHunt.com Website. The IsoHunt.com Website also has dedicated forums for discussion of its download technology, including "Files Chat", "BitTorrent Chat", "Hardware" and "Apps, etc".

25. Gary Fung, the president, founder and directing mind of the Plaintiff, has admitted, and bragged about, the fact that the IsoHunt Websites allow users to "steal" from copyright owners.

26. The Plaintiff also promotes the IsoHunt Websites as a file sharing distribution network. The Plaintiff solicits donations from users and sells IsoHunt branded merchandise to them. The IsoHunt Websites' network of users are encouraged to support the Plaintiff in its fight against copyright holders so that IsoHunt can continue to provide its file sharing services to the IsoHunt Websites' distribution network. The IsoHunt.com Website's home page declares to users "We must fight the increasing noise we are drowned in, that file-sharing is stealing" and attaches a copy of the Statement of Claim in this action.

27. The IsoHunt.com Website displays a selection of BitTorrent trackers that are available for use by users to share copyright content including the Sound Recordings. These trackers display information such as the tracker URLs and the number of seeds in each tracker which assists users in determining which trackers to use to share unlicensed copies of copyright content most expeditiously.

THE ISOHUNT TRACKERS

28. In addition to listing BitTorrent trackers commonly used for copyright infringement, the Plaintiff also operates at least two BitTorrent trackers of its own, accessible at <http://tracker.torrentbox.com:2710/announce> (the "TorrentBox Tracker") and <http://tracker.podtropolis.com:2710/announce> (the "Podtropolis Tracker"), collectively the "Trackers"). They are designed and programmed to coordinate and manage the unlicensed file sharing between users, the vast majority of which is infringing content.

29. In specific answer to the statement in paragraph 15 of the Statement of Claim that the "IsoHunt Website" does not host any trackers, the Defendants say that the Plaintiff operates, controls and hosts the Trackers and these Trackers are referenced in many of the document files hosted on the IsoHunt.com Website. Links to these Trackers are prominently displayed from the front page of the IsoHunt.com Website with hyperlinks that state, for example, "Need a tracker? Fast, Reliable, and Friendly community? Come to TorrentBox.com".

30. The Plaintiff also knowingly permits IsoHunt Website users to use the IsoHunt Website and Trackers knowing or having reason to know that the users will use these instruments to infringe the copyrights in the Sound Recordings.

DEGREE OF CONTROL

31. The Plaintiff exerts a significant degree of control over the activities of end-users, and actively fosters a growing community of copyright infringers. The Plaintiff has the right and ability and the means to control and eliminate the unlicensed file sharing that takes place at and through the IsoHunt Websites.

32. In specific answer to the statement in paragraph 33 of the Statement of Claim that the IsoHunt Websites are "content-agnostic" and indexes "files of all types and categories" the Defendants say that the Plaintiff takes measures to control and eliminate access to objectionable files such as pornography and fake content files. However, the Plaintiff has deliberately not taken any effective steps to control or eliminate unlicensed copyright file sharing at or through the IsoHunt Websites as it profits from the infringing uses of the IsoHunt Websites and it would be contrary to its financial interests to do so.

33. In specific answer to the statement in paragraph 39 of the Statement of Claim that the "vast bulk of the IsoHunt Search Engine processes runs without human knowledge or intervention", the Defendants say that the Plaintiff has the knowledge, right and ability and the means to control and eliminate the unlicensed file sharing that takes place at and through the IsoHunt Websites. The Plaintiff in fact exerts a significant degree of control over the operation of the IsoHunt Websites and the file sharing activities of the IsoHunt Websites' users.

34. The Plaintiff knows of, or in the alternative is willfully blind of and indifferent to, the rampant copyright infringement conducted at and through the IsoHunt Websites.

TAKE-DOWN POLICY

35. The IsoHunt.com Website publishes a "notice and takedown" policy with a stated objective of "respond[ing] to clear notices of alleged copyright infringement". However, the policy is, to the knowledge of the Plaintiff, completely ineffective to address the massive copyright infringement which is carried out at and through the IsoHunt Websites.

36. In specific answer to the statements in paragraphs 40-42 of the Statement of Claim that the Plaintiff takes steps to remove dot-torrent files corresponding to infringing content through its "notice and take-down" policy, the Defendants say that this so-called policy is completely inadequate, and has proven itself to be completely inadequate, in dealing with the staggering amount of infringement that occurs at and through the IsoHunt Websites.

37. In specific answer to the statement in paragraph 40 of the Statement of Claim that, upon request from rights-holder, the Plaintiff will remove links to the dot-torrent files that correspond to infringing content, the Defendants say that the Plaintiff's notice and take-down "policy" requires copyright holders to individually identify every instance of dot-torrent files that correspond to infringing content for it to be removed, a task which the Plaintiff knows is wholly impracticable. The Plaintiff has not implemented any effective form of automated filtering or screening for copyright protected material to ensure that such files are not made available or shared at or through the IsoHunt Websites, even though it could do so.

38. As of December 2009, the Plaintiff hosts over 4.2 million dot-torrent files corresponding to over 100 million BT Content Files. The Plaintiff's "policy" would require the copyright holders to identify each individual instance of an infringing dot-torrent file before the Plaintiff

removes it from the index of each of the IsoHunt Websites. Even once removed, the Plaintiff takes no steps to ensure other dot-torrent files corresponding to the same work are not indexed or re-indexed on the IsoHunt Websites.

39. There are often hundreds of dot-torrent files representing the same sound recording indexed on the IsoHunt.com Website, with new dot-torrent files constantly appearing from the over 500 other BitTorrent websites the IsoHunt.com Website indexes through its "spidering" technology. The Plaintiff's "policy" would require the Maker Defendants and other copyright owners to continually monitor each of the IsoHunt Websites for infringing dot-torrent files which, once identified, the Plaintiff will only "take down" within 7 days.

40. The Plaintiff is fully aware that this process is completely unfeasible and unworkable in practice for the Maker Defendants and other copyright holders, and even if carried out as stated, would be wholly ineffective in stopping the massive amount of infringing activity carried out at and through the IsoHunt Websites.

RELIEF SOUGHT

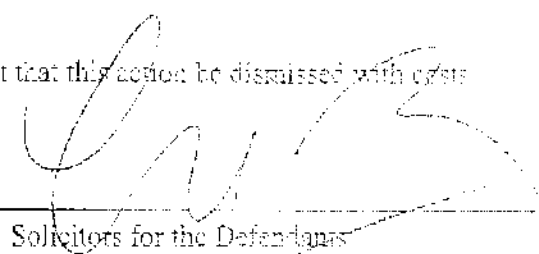
41. As a result of all of the forgoing activities, the Plaintiff has infringed the copyrights of the Maker Defendants in the Sound Recordings. The Plaintiff has without the consent of the Maker Defendants:

- (a) reproduced, distributed (to such an extent as to affect the Maker Defendants prejudicially), and exhibited in public, infringing copies of the Sound Recordings,
- (b) jointly with users of the IsoHunt Websites and pursuant to a common design, reproduced, distributed (to such an extent as to affect the Maker Defendants prejudicially), and exhibited in public, infringing copies of the Sound recordings.

- (c) authorized, induced, and knowingly aided, abetted and materially caused and contributed to IsoHunt Websites' users' infringements of the copyrights of the Maker Defendants in the Sound Recordings, and
 - (d) knowingly permitted the IsoHunt Website users to use the IsoHunt Websites and the Trackers knowing or having reason to know that the IsoHunt Website users will use these instrumentalities to infringe the copyrights of the Maker Defendants in the Sound Recordings.
42. The IsoHunt Websites attract millions of visitors per day. Each month millions of copies of the Sound Recordings and other copyright content are illicitly exhibited in public, distributed, and reproduced as a result of the acts of the Plaintiff. At no point have the Maker Defendants consented to, or received compensation for, this unlicensed file sharing.
43. In specific answer to the Plaintiff's claim against the Defendant Canadian Recording Industry Association ("CRIA"), the Defendant CRIA says that it does not own the copyrights in any sound recordings and has made no claim on its own behalf against the Plaintiff. Accordingly, CRIA is not a proper party to this action and the Plaintiff is not entitled to any declaration or other relief against CRIA.
44. The Defendants further say that this Court has no jurisdiction to grant any declaratory relief of non-infringement of copyright.

45. The Defendants therefore respectfully request that this action be dismissed with costs.

DATED: May 12, 2010


Solicitors for the Defendants

THIS STATEMENT OF DEFENCE is filed by Lisa Martz and Steve Mason, of the firm of McCarthy Tétrault LLP, Barristers and Solicitors, whose place of business and address for service is Suite 1300, 777 Dunsmuir Street, Vancouver British Columbia, V7Y 1K3. Office (604) 643-7126.