



NO SCORE FOR SETANTA SPORT IN BROADCASTING SPAT

LAURENT CARRIÈRE AND CLAIRE CÉBRON^{*}
LEGER ROBIC RICHARD, L.L.P.
LAWYERS, PATENT AND TRADEMARK AGENTS

PRECIS: The Federal Court has dismissed a motion for an interlocutory injunction to restrain a group of sports bars from showing certain European soccer matches on their premises. Justice Hughes held that Setanta Sport Ltd was unable to prove its case, due partly to insufficient evidence regarding copyright ownership.

In *Setanta Sport Limited v 2049630 Ontario Inc (Verde Minho Tapas & Lounge)* the Federal Court has dismissed a motion for an interlocutory injunction to restrain the defendants from projecting certain European soccer matches in their premises. The plaintiff, Setanta Sport Limited, claimed to own copyright and broadcast rights in these televised matches.

The matches are transmitted to Canada via encrypted satellite signals and the defendants (mostly sports bars) were accused of transmitting these sporting events to their clientele through television sets located in the affected bars.

The court based its decision on four counts. First, it held Setanta Sport's evidence regarding copyright to be insufficient. Further, the copyright certificates presented by Setanta Sport indicate that it is the author of dramatic works for which it invokes the existence of a copyright. Yet in regard to the *Copyright Act* an author must be a human being or a group of human beings. The act is explicit when it comes to recognizing a corporation with no human lifetime as the possessor of original copyrights. According to the court, Setanta Sport failed to evidence its acquisition of such rights. In addition, it did not establish, in regard to Section 5 of the act, that the author of the copyright was either a citizen or subject ordinarily resident in a treaty country and that the work, if published, was first published in that particular country.

Second, in accordance with Paragraph 39.1(2)b of the Copyright Act, for a court to be able to extend an injunction generally granted when copyright exists in a work to

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^{*} Lawyer and trade-mark agent, Laurent Carrière, is a senior partner with LEGER ROBIC RICHARD, L.L.P., a multidisciplinary firm of lawyers, and patent and trademark agents. Claire Cébron is an articling student with the firm. Published in the 2007-10 issue of World Copyright Law Report. Publication 328.039.

a work not yet in existence, the plaintiff must be able to prove the likelihood of future existence and authorship of the work. Setanta Sport did not do so.

Third, the court responded to Setanta Sport's evocation of the *Radiocommunication Act*. Setanta Sport claimed to be the holder of "broadcast rights for North America". Yet, the nature of these rights was not explained nor how they were obtained, where they came from, nor what ground they covered. Consequently, Setanta Sport failed to demonstrate that it was the 'lawful distributor' of the affected encoded signal. Only such a lawful distributor is entitled to authorize a person from decoding an encoded signal.

Fourth, the court noted that the injunction sought was not specific enough. It aimed to restrain the defendants from showing "all matches" that are presented on the Setanta Sport Channel. Yet, no information was provided regarding these matches, their related copyrights or the fact that Setanta Sport is the holder of the distribution rights in Canada.

Finally, Justice Hughes pointed out that Setanta Sport's failure to present sufficient evidence had already been addressed by the court in a related case (*1395047 Ontario Inc v New Atlantico Café and Restaurante Inc*).

For all these reasons, the court dismissed the motion due to Setanta Sport's inability to prove its case. However the court allowed it to reapply if better evidence is provided.

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