

# Kevin E. Kemp

a professional corporation

**Barrister**

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***By Fax***

January 25, 2005

Jacob C. Glick  
McCarthy, Tetrault  
Box 48, Suite 4700  
Toronto-Dominion Bank Tower  
Toronto, Ontario  
M5K 1E6

Dear Mr. Glick:

***Re: Claman et al v. CBC***

I acknowledge receipt of your correspondence dated January 5, 2005. The following is our response to your demand for particulars:

1. **The manner in which CBC refused to permit use of the theme song for Hockey Night in Canada ( the "Composition") in third party commercials as referenced in paragraph 34(d) of the Statement of Claim;**

The CBC refused to permit the use of the Composition by Bell Mobility.

2. **Particulars with respect to the creation of "billboard" advertisements for Ford Motor Company as referenced in paragraph 34(f) of the Statement of Claim;**

The use of the term "billboard" does not refer to an object seen on the Gardiner Expressway but rather a stagnant visual image with an audio component. The extent of CBC's use of "billboard" advertisements in relation to Ford Motor Company is within the knowledge of the defendant and available in the CBC archives. It is our information that the "billboards" were aired, at the very least, on many occasions in the course of the 1998/99 and 1999/2000 seasons.

3. **CBC's misrepresentation to third parties that the Composition should be called "CBC's Hockey Night in Canada Theme Song" as referenced in paragraph 34(h) of the Statement of Claim;**

We do not believe this is a proper particular as it is within the knowledge of the defendant. Nevertheless, please find attached an electronic e-mail communication from John Ciccone to Tony Agostini and Nancy Carrell of CBC dated November 21, 2002 that addresses the issue. The representation was made by Lucy Collin, Director of National Sales of CBC Television.

4. **CBC's use of the Composition on a broadcast of the Royal Canadian Air Farce as referenced paragraph 34(j) of the Statement of Claim;**

The Composition was broadcast on October 11, 2002.

5. **CBC's use of the Composition on a Guy LaFleur tribute as referenced in paragraph 34(k) of the Statement of Claim;**

The program in question aired on December 2, 2002 at approximately 8:00 p.m. Eastern Standard Time.

6. **CBC's use of the Composition on a Rick Mercer special as referenced in paragraph 34(l) of the Statement of Claim;**

It is believed that the broadcast aired in the 2<sup>nd</sup> quarter of 2001.

7. **CBC's use of the Composition on various curling broadcasts as referenced in paragraph 34(m) of the Statement of Claim;**

The Composition was aired on several occasions between January and March, 2003 in the course of broadcasts of the Nokia Brier, the Carter Women's Junior, the Carter Men's Junior, the 2003 Women's Canada Cup, the 2003 Men's Canada Cup and the 2003 Ford World Curling Championships for both men and women.

8. **CBC's alteration of the musical arrangement of the Composition as referenced in paragraph 35 of the Statement of Claim;**

Please refer to the CBC broadcast tapes of Hockey Night in Canada throughout the 1989/99 and the 1999/2000 seasons.

9. **CBC's continued use of the Composition outside of Canada in breach of the Synchronization License as referenced in paragraph 36 of the Statement of Claim.**

Attached please find a copy of an e-mail communication from CBC employee, Tony Agostini, to John Ciccone dated July 28, 2003 which specifically acknowledges use of the Composition in markets outside of Canada.

With reference to the balance of your request, there are no documents referenced in paragraphs 2, 3 and 4 of the Statement of Claim. Any letters referenced in paragraph 30 of the Statement of Claim are within the knowledge and possession of the defendant.

Finally, to the extent that the defendant may question the chain of title of the Composition, it should raise the issue in the Statement of Defence. Thereafter, you are welcome to canvass the issue more extensively in the course of examinations for discovery.

We would appreciate receipt of your Statement of Defence no later than February 7, 2005.

Yours very truly,

*(Electronically Signed  
By Kevin E. Kemp)*

Kevin E. Kemp

KEK/dg