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ELECTRONIC COMMERCE: A PRACTITIONER'S GUIDE

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Written with the practitioner in mind, this work is organized in an accessible format and offers a comprehensive guide to all aspects of Electronic Commerce.

This release features updates to Updates to Appendix 1A—Quantum Table—Copyright Infringement in Chapter 1—Copyright and E-Commerce. This release also feature updates to Appendix 1B—Summary of Procedure—Conduct of Proceedings for Proposed Tariffs Before Copyright Board of Canada in Chapter 1—Copyright and E-Commerce. This release also features updates to Appendix 2A—Quantum Table—Trademark Infringement and Passing Off in Chapter 2—Trademarks and the Internet. This release also features the addition to the Appendices in Chapter 1—Copyright and E-Commerce of the addition of the Copyright Board's Practice Notice on Confidential Information, and the addition of the Copyright Board's Inflation Guidelines.

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Highlights

- **Quantum Table—Copyright Infringement—Site-Blocking Order**—The Plaintiffs produce, own, and/or distribute popular motion pictures and television programs. Before the action was commenced, the Defendant John Doe 1 operated an online piracy platform under the name “Soap2day”. The platform provided unlimited and unauthorized access to thousands of motion pictures and television programs, including a large number of works owned by the Plaintiffs. The Plaintiffs report a growing trend, whereby infringing platforms that are successfully deactivated are promptly replaced by copycat sites. Platforms such as 123movies, Popcorn Time, and The Pirate Bay have all been shut down or blocked at one time or another, only to be replaced by identical sites with similar domain names. Copyright owners are forced into a digital game of “whack-a-mole”: each time a site is deactivated, another immediately appears in its place. Traffic to domains that are subject to site-blocking orders may be disrupted, but the overall traffic to copycat sites is undiminished. Applying the considerations identified by this Court in its previous jurisprudence to the Plaintiff’s motion for a Site-Blocking Order, the Plaintiffs have demonstrated that: (a) the Order is necessary and the most, if not the only, effective remedy to put an end to the copyright infringing activities of the Defendants and of those who imitate their platforms; (b) the Order is not unnecessarily complex, and implementation costs are demonstrated to be low or negligible; (c) the Order is dissuasive, does not unduly limit the rights of others, and is limited in reach—to the extent that third parties who have not had an opportunity to make representations in the context of the present motion believe they are affected by the Order, they will have the right to seek its variation upon being so affected; and (d) the Order is fair and reflects a careful weighing of the rights of those involved. The Order provides that it will terminate two years from the date of issuance, unless the Court orders otherwise: *Bell Media Inc. v. John Doe 1 (Soap2day)*, 2025 FC 133 (F.C.).
- **Quantum Table—Trademark Infringement and Passing Off—Nominal Damages for Infringement**—Justice Manson agreed that there are additional benefits, beyond use of the BEST BRAINS trademark, that follow from the franchise fees. Since the Respondent has only benefitted from the use of the BEST BRAINS trademark, Justice Manson considered the relevance of the asserted franchise and royalty fees in light of this in the determination of nominal damages. Given the Respondent’s conduct leading up to the process with respect to the cease and desist letter and renewal of the business name “Best Brains Tutors”, and their refusal to participate in the Court process until pushed to do so by the Court, and even then providing no evidence to support the defence or material facts to dispute the claims under sections 7(b) and 20 of the *TMA*, Justice Manson concluded that damages of \$15,000 were reasonable in the circumstances: *Best Brains, Inc. v. Priyadharishini Balasingam DBA Best Brains Tutors*, 2024 CarswellNat 5349, 2024 FC 2089 (F.C.).