

Publisher's Note

An Update has Arrived in Your Library for:

Please circulate this notice to anyone in your office who may be interested in this publication. <i>Distribution List</i>
<input type="checkbox"/>
<input type="checkbox"/>
<input type="checkbox"/>
<input type="checkbox"/>

INTELLECTUAL PROPERTY DISPUTES: RESOLUTIONS AND REMEDIES

Ronald E. Dimock

Release No. 7, August 2024

This publication is a one-stop reference for litigators and counsel advising on Intellectual Property disputes that focuses on remedies available to IP owners and stakeholders at all stages of possible dispute, from risk management, through mediation and ADR, and to all levels of litigation. This release features updates to Appendices 2C, Quantum Section – Trademark Infringement and Passing Off; 2E, Trademarks Opposition Proceedings – Summary of Procedure; and 2F, Section 45 Proceedings under the *Trademarks Act* – Summary of Procedure. This release also includes updates to Chapter 3, Copyright, and to Appendix 3C, Summary of Procedure – Conduct of Proceedings for Proposed Tariffs before Copyright Board of Canada. This release also features updates to Appendix 6B, Sentencing and Resolutions Cases – Offences under the *Competition Act* and to Chapter 13, Intellectual Property Trial.

THOMSON REUTERS®

Customer Support

1-416-609-3800 (Toronto & International)

1-800-387-5164 (Toll Free Canada & U.S.)

E-mail CustomerSupport.LegalTaxCanada@TR.com

This publisher's note may be scanned electronically and photocopied for the purpose of circulating copies within your organization.

Highlights

- **§ 2C:101 *Keezio Group, LLC v. The Shrunk's Family Toy Company Inc.*** — Keezio claimed that it lost profits totalling \$93,718 USD as a result of the November 2019 Complaints, but Justice Loo regarded the evidence advanced regarding damages as inadequate. There was no independent or expert evidence regarding the assessment or the calculation of damages. Keezio's evidence in support of its damages claim came only from Clutek and aspects of the damages calculation were problematic. Justice Loo noted that there was no clear evidence contradicting Clute's assertions as to damages, and it was reasonable to conclude that the delisting of Keezio's product pages caused a decrease in Keezio's sales on the days on which the delisting occurred. Accordingly, Justice Loo would assess damages on that basis. In Justice Loo's view, it was appropriate to assess damages by comparing Keezio's 2018 figures to its 2019 figures, without a 30 percent increase in sales. The decreased sales would then be multiplied by a profit margin of \$50 USD per unit for the days during which the Keezio sales pages were delisted. Justice Loo calculated that the sales on the relevant days in 2018 totalled 1,129 units, and the sales on the relevant days in 2019 totalled 640 units. Therefore, the decrease in sales totalled 489 units. At a loss of profit of \$50 USD per unit, the damages were \$24,450 USD: *Keezio Group, LLC v. The Shrunk's Family Toy Company Inc.* (2024), 2024 BCSC 64, 2024 CarswellBC 89 (B.C. S.C.).
- **Appendix 3C, Summary of Procedure – Conduct of Proceedings for Proposed Tariffs Before the Copyright of Canada** — The summary has been updated to reflect the Practice Notices that were issued by the Board and became effective on June 27, 2023, including the Practice Notice on Interrogatory Process, the Practice Notice on Changing the Status of a Party, and the Practice Notice on Filing of Statement of Issues to be Considered.
- **§ 6B:27.05 *The Commissioner of Competition v. AMP ME Inc.*** — The Consent Agreement provided that the Respondents shall pay an administrative monetary penalty of \$1,500,000. Payment of the total amount was partially suspended. In partial satisfaction of the administrative monetary penalty, the Respondent shall pay an amount of \$310,000. The Respondent shall also pay \$40,000 for costs incurred by the Commissioner during the course of his investigation into the matter. The Respondent was responsible for the development and marketing of the Mobile Application (Amp Me), which enables the sound of music to be increased by synchronizing several devices together. The Respondent offers the Mobile Application on the Apple App Store in Canada and the in United States as a free download. A subscription is necessary to continue fully using the Mobile Application once the free trial has finished. The Respondent retained the services of one or more third parties to publish positive reviews of the Mobile Application, such as reviews with a five-star rating in the Apple App Store in the United States (astroturfing). The positive reviews were not genuine reviews from consumers or users of the Mobile Application. The purchased reviews positively affected the ranking and overall score of the Mobile Application in the Apple App Store in the United States. The Respondent stopped purchasing reviews after a news article was published in January 2022. The Commissioner was of the opinion that testimonials

and reviews were a significant source of information for consumers. The Commissioner was of the opinion that price is an important criterion in consumers' choice with respect to products or services. The Commissioner concluded that the purchased positive reviews were false or misleading, considering the general impression given and the literal meaning, since the purchased positive reviews were not genuine reviews from consumers or users of the Mobile Application. The Respondent voluntarily collaborated to resolve the matter and implement the terms of the Consent Agreement. The Respondent asserted that it stopped making or permitting any representations regarding the Mobile Application using the terms "completely free", "it's free", and "free app". The Respondent asserted that it had implemented guidelines prohibiting the publication, in the name of or on behalf of the Respondent, of representations to the effect that the Mobile Application is completely free, and that those representations made up only a minority of the representations promoting the Mobile Application in general. The Respondent voluntarily modified the page on the Apple App Store to specify the functionalities offered by the free download and by the subscription: *The Commissioner of Competition v. AMP ME Inc.* (December 4, 2023), CT-2023-011 (Competition Tribunal, Registered Consent Agreement).

ProView Developments

Your ProView edition of this product now has a new, modified layout:

- The opening page is now the title page of the book as you would see in the print work
- As with the print product, the front matter is in a different order than previously displayed
- The Table of Cases and Index are now in PDF with no searching and linking
- The Table of Contents now has internal links to every chapter and section of the book within ProView
- Images are generally greyscale and size is now adjustable
- Footnote text only appears in ProView-generated PDFs of entire sections and pages