

**CITATION:** Echostar Satellite LLC v. Pelletier, 2010 ONSC 2282  
**COURT FILE NO.:** 07-CL-6889  
**DATE:** 20100511

**SUPERIOR COURT OF JUSTICE – ONTARIO**

**(COMMERCIAL LIST)**

**RE:** ECHOSTAR SATELLITE LLC, ECHOSTAR TECHNOLOGIES CORPORATION and NAGRASTAR LLC, Plaintiffs

**AND:**

LANCELOT MARC PELLETTIER a.k.a. LANCE PELLETTIER a.k.a. PARAMOUNT a.k.a. FTASOURCE, LANCELOT MARC PELLETTIER c.o.b. as www.hashhu.com, LANCELOT MARC PELLETTIER c.o.b. as www.ftasource.com, LANCELOT MARC PELLETTIER c.o.b. as www.simplyfta.com, LANCELOT MARC PELLETTIER c.o.b. as FTASOURCE, JOHN DOE, JANE DOE and other persons unknown who have conspired with the name Defendants, Defendants

**AND RE:**

**COURT FILE NO.: 07-CL-6951**

BELL EXPRESSVU LIMITED PARTNERSHIP, Plaintiff

**AND:**

LANCELOT MARC PELLETTIER a.k.a. LANCE PELLETTIER a.k.a. PARAMOUNT a.k.a. FTASOURCE, LANCELOT MARC PELLETTIER c.o.b. as www.hashhu.com, LANCELOT MARC PELLETTIER c.o.b. as www.ftasource.com, LANCELOT MARC PELLETTIER c.o.b. as www.simplyfta.com, LANCELOT MARC PELLETTIER c.o.b. as FTASOURCE, JOHN DOE, JANE DOE and other persons unknown who have conspired with the name Defendants, Defendants

**BEFORE:** MORAWETZ J.

**COUNSEL:** Denise Bambrough and Catherine Moreau, for the Plaintiffs

Charles Wagman, for the Defendants

**ENDORSEMENT**

## Overview

[1] In separate actions, Echostar Satellite LLC, Echostar Technologies Corporation (collectively “Echostar”) and NagraStar LLC (“NagraStar”), and Bell ExpressVu Limited Partnership (“Bell” or “ExpressVu”) bring motions for interim and interlocutory injunctions against the defendants, Lancelot Marc Pellettier a.k.a. Lance Pellettier a.k.a. Paramount a.k.a. FTASource (“Pellettier”), Lancelot Marc Pellettier c.o.b. as www.hashhu.com (the “HashHU Website”), Lancelot Marc Pellettier c.o.b. as www.ftasource.com (the “FTASource Website”) and Lancelot Marc Pellettier c.o.b. as FTASource (collectively, the “Pellettier Defendants”). EchoStar and Bell seek this relief to enjoin the Pellettier Defendants from continuing to engage in conduct contrary to the *Radio Communication Act* (the “Act”).

[2] This endorsement is in respect of both motions.

[3] Echostar provides satellite broadcast service to customers throughout the United States, Puerto Rico and the U.S. Virgin Islands via a direct-broadcast satellite system. Echostar uses high-powered satellites to broadcast services (“Dish Network Programming”) to customers who have been authorized to receive such services after payment of a subscription fee.

[4] NagraStar is a supplier of proprietary technology, including components that are part of a “conditional access system” known as Digital Nagra Advanced Securing Process (“DNASP”), which is used by Echostar to scramble its satellite signals. NagraStar provides DNASP to Echostar under a licence.

[5] Bell provides direct-to-home (“DTH”) satellite-based subscription television programming in Canada (“Bell Programming”). Bell is licensed by the Canadian Radio-Television and Communications Commission (“CRTC”) under the *Broadcasting Act* (the “Broadcasting Act”) and is a “lawful distributor” within the meaning of the Act. In order to receive Bell Programming, a subscriber requires certain equipment that permits him or her to descramble encrypted satellite signals and receive the channels ordered by the subscriber. Bell has the exclusive right to authorize this decoding in Canada.

[6] Echostar uses the same technological platform (*i.e.* receivers and access card encryption technologies) as Bell.

[7] Counsel to the plaintiffs assert that the Pellettier Defendants have:

- (a) operated the HashHU Web Site in order to:
  - (i) advertise, promote, offer, and provide information, assistance, and advice on Piracy Technology (defined below) through product introductions and reviews and information on suppliers thereof;

- (ii) advertise, promote, offer, and provide software and programming code designed to permit the use of Piracy Technology for piracy of DISH Network Programming and Bell Programming;
- (iii) provide “keys” required for piracy of DISH Network Programming and Bell Programming;
- (b) advised, assisted, directed, recommended and informed users of the HashHU Web Site of other web sites that offer, sell or distribute Piracy Technology;
- (c) operated the FTA Source Web Site and other web sites in order to sell free-to-air receivers for the purpose of permitting other persons to engage in piracy of DISH Network Programming and Bell Programming; and
- (d) assisted, aided, and abetted other persons in engaging in piracy of DISH Network Programming and Bell Programming.

[8] The plaintiffs seeks an interim and interlocutory injunction restraining the Pellettier Defendants from directly or indirectly, by any means whatsoever:

- (a) aiding, abetting, facilitating, conspiring, combining, inciting, promoting, and participating in any way and by any means whatsoever, in the selling, marketing, offering to the public, distributing, providing, trafficking in, letting for hire, exposing, offering or licensing for the purpose of trade or otherwise, any device, technology, product, service, equipment or apparatus, software, programming code, or any component thereof, which has or may be used, or is or was intended to be used, for the purpose of circumventing the Plaintiffs’ security system, thereby permitting the unauthorized reception and decoding of EchoStar’s and Bell’s encrypted satellite television programming signals, including, without limiting the generality of the foregoing, free-to-air (“FTA”) receivers and satellite receivers that have been or could be programmed or modified to enable the unauthorized reception of DISH Network Programming and Bell Programming (“Piracy Technology”);
- (b) operating, maintaining, servicing, modifying or accessing the HashHU Web Site and the FTA Source Web Site (collectively the “Web Sites”), or any other web site for any purpose contrary to this injunction, or participating or engaging in any electronic mail, newsgroup, Internet relay chat communications, and forum web sites for any purpose contrary to this injunction;
- (c) creating, modifying, operating, maintaining, servicing, or posting content to any other web site for any purpose contrary to this injunction;
- (d) soliciting any person to purchase Piracy Technology from the Pellettier Defendants or the Web Sites or any other web site;

- (e) advising, instructing, counselling, directing, recommending, or informing any person on the identification, purchase, acquisition or use of any Piracy Technology, including but not limited to the programming or modifying of satellite receivers for the purpose of stealing DISH Network Programming and Bell Programming, or providing services in support of such activities; and
- (f) assisting, aiding or abetting any other person in carrying out any of the activities described in paragraphs 7(a) to 7(d) above.

[9] EchoStar further seeks an interim and interlocutory injunction requiring the Pellettier Defendants, their officers, directors, servants, agents, employees, and any and all persons acting on behalf of or in conjunction with any of the Pellettier Defendants, and any and all persons having control of the Web Sites and any other web sites owned or operated by the Pellettier Defendants, to forthwith remove from the Web Sites and any other web sites owned or operated by the Pellettier Defendants and render inaccessible by any person any and all text, graphics, electronic data or other content of the Web Sites and any other web sites owned or operated by the Pellettier Defendants contrary to this injunction.

[10] Similar orders to those requested in these motions have been granted in Ontario and in other provinces in cases of Piracy Technology. Examples are *DIRECTV Inc. v. Sandhu et al*, September 25, 2006, Court File No. S066129 (BCSC); *DIRECTV Inc. v. Gray et al*, June 24, 2003, Court File No. 5033413 (BCSC); *DIRECTV Inc. v. Toth*, March 26, 2002, (Ont. S.C.J.), Court File No. 02-CV-226455 CM3; *Bell ExpressVu Limited Partnership v. Pomeroy*, [2002] O.J. No. 4064 (S.C.J.); *DIRECTV Inc. v. Biris et al*, January 13, 2003, Court File No. 500-17-013815-033 (Que.S.C.); and *Echostar Satellite LLC et al v. Bates et al*, January 21, 2008, Court File No. S080423, (BCSC).

### **Facts**

[11] For a number of years, a black market has arisen in Piracy Technology, the effect of which has been to provide access to the programming of both Echostar and Bell through illegally modified access cards. As a result of the use of the same technological platform, the same piracy devices can often be used to access the Dish Network Programming and the Bell Programming.

[12] Both Echostar and Bell allege that the Pellettier Defendants have been pirating or stealing the Dish Network Programming and the Bell Programming through the use of free-to-air (“FTA”) receivers which have been programmed with piracy software. FTA receivers are designed to receive FTA satellite television signals, which are available free of charge and include religious, business, music and information channels. To the extent that FTA receivers are not programmed or used to steal encrypted satellite television programming signals for which a subscription is necessary, their sale and use is legal.

[13] In this case, both plaintiffs allege that the Pellettier Defendants have been involved in a scheme to acquire and modify FTA receivers for piracy purposes.

[14] The alleged illegal activities of the Pellettier Defendants are described, in detail, in the comprehensive written submissions of the plaintiffs.

[15] The plaintiffs in each action allege that “Lance” is known within the piracy community to be the owner of the HashHU Website and the user of the name Paramount.

[16] Mr. Pellettier has admitted that he operates the FTASource Website and is the owner of the business named FTASource. He asserts, however, that there is absolutely no component of his business that is intended to permit customers to obtain Dish Network Programming or Bell Programming without payment of subscription fees.

[17] In response to Mr. Pellettier’s claims, Plaintiffs’ counsel states that Mr. Pellettier (i) has admitted in cross-examination that he advertised the FTASource Website on and sponsored the HashHU Website; (ii) may have sold FTASource products through the HashHU Website; and (iii) was aware that the HashHU Website posted keys which could be used to access Dish Network Programming and Bell Programming without payment of subscription fees.

[18] Mr. Pellettier acknowledged that people from all over North America are able to access the FTASource Website and order products through it. Mr. Pellettier specifically acknowledged that he had customers in both Canada and the United States.

[19] The plaintiffs provide a detailed overview of the HashHU Website in the Echostar factum at paragraph 36.

[20] Mr. Pellettier denied in cross-examination that he is the user named “Paramount”, who is known to be the owner of the HashHU Website.

[21] However, counsel to the plaintiff submits that there is a significant amount of evidence that Paramount is Mr. Pellettier.

[22] This evidence includes comments made by Paramount that coincide with details of Mr. Pellettier’s life, the common knowledge among the piracy community that someone named “Lance” is the user of the name “Paramount”, common birthdates, and Paramount’s reference to non-public events and details relating to this matter.

[23] In addition, it is alleged that Mr. Pellettier advised Mr. David Fuss, the owner of Ariza Technology Inc., which was formerly in the business of selling FTA receivers, that he had purchased the HashHU Website for \$10,000. Prior to purchasing the HashHU Website, it is alleged that Mr. Pellettier had been a regular customer of Ariza Technology Inc., which supplied Mr. Pellettier with FTA receivers and related satellite television equipment for his online business, the FTASource Website. Through his various discussions and dealings with Mr. Pellettier, Mr. Fuss learned that Mr. Pellettier posted messages on the HashHU Website under the name “Paramount”.

[24] It is further alleged that Mr. Pellettier advised Mr. Jeffrey Reason, an individual who formerly operated a forum website called [www.satscams.com](http://www.satscams.com) and worked for FreeTech Canada,

a company which imported and sold FTA receivers, that he had purchased the HashHU Website. In addition, Mr. Pellettier provided Mr. Reason with administrative access to the HashHU Website in or around April 2006 and with this access, Mr. Reason was able to review chats in the various chat rooms, where members openly referred to “Lance” as the owner of the HashHU Website.

[25] It is also alleged that Mr. Reason stated that Mr. Pellettier advised him that he posted on the HashHU Website using the user name “Paramount”. When Mr. Reason gained administrative access to the HashHU Website and its various chat rooms, he learned that the members of the HashHU Website with access to the chat rooms openly referred to “Lance” as the user named “Paramount”.

[26] The plaintiffs conducted an investigation which disclosed evidence which, in their view, establishes that “Paramount” is the defendant, Mr. Pellettier.

[27] Counsel to the plaintiffs provided a summary of what was referenced as key evidence establishing that Mr. Pellettier is “Paramount”. This summary was provided at the hearing of the motion. A copy of the summary is attached as Schedule A to these reasons.

[28] Neither Mr. Fuss nor Mr. Reason were cross-examined on their affidavits which were sworn July 15, 2009 and August 25, 2009 respectively.

[29] The affidavit of Mr. Reason also contains an exhibit of a transcription of an audio recording from March 17, 2007 of a recording of a telephone conversation between Mr. Pellettier and Mr. Reason. There was a discussion with respect to the possibility of the plaintiff obtaining an injunction against him. The exchanges is found on pages 22 – 23 of the transcript which states as follows:

Pellettier: Well if I can do that, I mean, assuming they don't get an injunction on me, I guess I'm okay.

Reason: Well that's what they're going to do and that's also probably what they're doing now and that's probably why. In fact, when he told you that he was getting an injunction, he was probably doing it because you went and talked to the lawyer, right?

Pellettier: He told me that, the lawyer told me, that their lawyer contacted him and said they were getting an injunction.

Reason: Yeah and so that's the only way that they would be able to stop you right now. Like you'd be kind of screwed right now if you did that, right?

Pellettier: If I did get an injunction?

Reasons: Yeah, because well then you wouldn't be able to make any money off of it and your users would eventually disappear, probably fairly quick. I mean there's people all over the place right now –

Pellettier: Well if they get injunctions the site is gone so.

Reason: Yeah but no, I don't think they can make you do your site gone; they can just make you take certain things off of it, right?

Pellettier: Oh, okay.

Reason: I think. I'm not really sure about that. Because you had mentioned that they can make you take sections down and I'm going by the fact that Darryl Gray still owns Pirate's Den and it's still running. Type in Piratesden.com and you'll go to the site.

Pellettier: Doesn't it go to Digital Insurrection?

Reason: Yeah, that's it. It's the same site. Digital Insurrection is the same site. He only changed the name of it because he did that at the time when he was being sued and it's been like that ever since.

Pellettier: Oh, okay.

Reason: You know, kind of like if you just dropped HashHU right now and started whatever, Lance.com right now, and just changed the database and everything over to Lance.com. They're suing HashHU, they're not suing Lance.com, right. And that would just piss them off because now they've got to go back to court and add Lance.com to it.

Pellettier: That gives me another 20 days, right?

[30] Counsel to Mr. Pellettier acknowledged that Mr. Pellettier has been in the business of selling FTA receivers and that Mr. Pellettier operates [www.FTASource.com](http://www.FTASource.com) and is in the business of selling legal, unmodified FTA equipment.

[31] Counsel also submits that there is absolutely no component of FTA's business that is intended to permit customers to obtain the plaintiffs' services without payment or subscription fees.

[32] Counsel to Mr. Pellettier also submits that the evidence is clear that the systems sold by Mr. Pellettier do not have access cards and that Mr. Pellettier only sells FTA receivers, which do not have access cards. Further, there is no evidence before the court that Mr. Pellettier has at any time modified an access card.

[33] Further, counsel submits that the plaintiffs' claim hinges on the assertion that Mr. Pelletier is Paramount; however that Mr. Pelletier has sworn that he is not Paramount and that he only owns one website, namely, FTASource, which raises an issue of credibility.

[34] Counsel also challenges the character of Mr. Fuss, as well as Mr. Reason, stating that they were involved in satellite television piracy.

[35] In addition, counsel to Mr. Pelletier submits that Mr. Pelletier has consistently maintained that he never owned or operated the HashHU Website and that there is, accordingly, an issue of credibility that is raised in the plaintiffs' motion. Further challenges to the evidence of the plaintiffs are contained at Part II of the facta provided by counsel to Mr. Pelletier.

[36] The factual summaries painted by the parties are very different. However, it is necessary, in circumstances such as these, to take a reality check. In my view, this is what the plaintiffs have done by providing the summary at Schedule A.

[37] It is sometimes difficult to assess credibility solely on the basis of affidavit evidence, but the position put forth by Mr. Pelletier, that he is completely uninvolved in satellite piracy, leaves me questioning his credibility. In making this statement, I again emphasize that neither Mr. Fuss nor Mr. Reason were cross-examined.

[38] It is noted that Schedule A was not provided to Mr. Wagman in advance of the hearing. This is unfortunate, as it precluded a considered response at the hearing. However, the summary is based on points that were raised on the record and which were not addressed or convincingly challenged by the defendants.

[39] Having considered the record, I prefer the evidence submitted by the plaintiffs. The plaintiffs have, in my view, established a strong basis for their contention that "Paramount" is Mr. Pelletier.

[40] The plaintiffs have also, in my view, established a link between Mr. Pelletier, Paramount and HashHU, and thus have established a strong basis for their claim.

[41] In the circumstances, although Mr. Pelletier has sworn he is not Paramount, I am sceptical as to the truth of such statements. In these circumstances, it seems to me that such statements should not foreclose the plaintiffs from obtaining injunctive relief.

[42] I find myself in agreement with the positions put forth by counsel to the plaintiffs. The positions put forth by Mr. Pelletier have to be regarded with a degree of suspicion.

[43] I turn now to the question as to whether an interim or interlocutory injunction should be granted.

## **Analysis**

[44] The three-part test for granting an interlocutory injunction is set out in *RJR MacDonald Inc. v. Canada (Attorney General)* [1994] 1 S.C.R. 311 [*RJR MacDonald*]:

- (i) is there a serious question to be tried?
- (ii) will the applicant suffer irreparable harm if the injunction is not granted?
- (iii) which party will suffer the greater harm from granting or refusing the remedy pending a decision on the merits?

[45] The first branch of the *RJR MacDonald* test involves a relatively low threshold, requiring only that the plaintiffs show that the claim is not frivolous or vexatious and stands a reasonable chance of success at trial.

[46] The serious questions to be tried include whether Mr. Pelletier is the owner and operator of the HashHU Website, whether the HashHU Website is a piracy website, whether offences under the Act, and the *Criminal Code* (which makes any person who aids an offence under the Act a party to the offence) have been committed and whether Bell and Echostar have civil causes of action against the Pelletier Defendants.

[47] I am satisfied that the plaintiffs have established that there is a strong *prima facie* case that the Pelletier Defendants have breached ss. 9(1)(c) and 10(1)(b) of the Act causing harm to the plaintiffs for which the Pelletier Defendants are liable under s. 18(1)(a) of the Act. There are serious questions to be tried.

[48] The second branch of the *RJR Macdonald* test deals with irreparable harm. The plaintiffs take the position that they suffer an economic loss every time Piracy Technology is used to descramble programming in place of the purchase of a legitimate subscription. Individuals using Piracy Technology do not pay the required fees to either Echostar or Bell. The plaintiffs take the position that it is the avoidance of those fees that makes Piracy Technology attractive to certain individuals.

[49] Specifically, the plaintiffs allege that the conduct of the Pelletier Defendants causes, has caused and continues to cause significant and irreparable harm in that they deprive the plaintiffs of an incalculable number of existing and prospective customers; they cause a loss of revenue, proceeds, profits and other benefits which is also incalculable, because it is difficult to trace, calculate or prove; they exploit for commercial gain, Echostar's and Bell's trade secrets and confidential information; they jeopardize the goodwill associated with Echostar's and Bell's name and the reputation in the marketplace; and they destroy the relationships which Echostar and Bell have developed over many years with its suppliers and customers. NagraStar similarly loses revenue as a result of the conduct of the Pelletier Defendants as it reduces licensing revenues.

[50] The plaintiffs also take the position that because the number of users of the Piracy Technology is unknown, it is very difficult to calculate the actual losses that they have sustained. Thus, they assert that they have no adequate legal remedy other than the injunctive relief sought

in this motion to address the continuing violation of its rights, and bring an end to the illegal acts of the Pellettier Defendants.

[51] I accept the submissions of the plaintiffs on the issue of irreparable harm.

[52] The third branch centres around the balance of convenience. Relevant factors include:

- (a) the strength of the plaintiffs' case;
- (b) which of the parties has acted to alter the balance of their relationship, thereby altering the *status quo*; and
- (c) the willingness of the parties to provide an undertaking as to damages.

[53] I am satisfied that both plaintiffs have established a strong *prima facie* case that the Pellettier Defendants have contravened the Act and aided and abetted other persons in doing so.

[54] Counsel to the defendants submits that the granting of an injunction would effectively put Mr. Pellettier out of business. This argument has been used before. In *Bell ExpressVU Limited Partnership v. Tedmunds & Co. Inc.*, [1999] O.J. No. 3679 at paragraph 26, Nordheimer J. stated:

I do not view it is an adequate response to avoid an injunction in these circumstances for a defendant to suggest that it will be put out of business unless it is permitted to continue to engage in activities that strongly appear to be in violation of at least one, if not two, Federal statutes [*i.e.* the *Radiocommunication Act* and *Criminal Code*].

[55] Counsel to the plaintiffs submits that the Pellettier Defendants have acted to alter the balance of their relationship with the plaintiffs and the *status quo* through their unlawful conduct and, as such, it is not an adequate response to avoid an injunction in these circumstances to complain that they will be put out of business or that their illicit business will otherwise be adversely affected.

[56] Counsel also submits that Mr. Pellettier, while selling FTA receivers through the FTASource Website has, also, through the HashHU Website, provided the information, instruction and “keys” necessary to enable those persons purchasing FTA receivers to use them for the purpose of stealing DISH Network Programming and Bell Programming.

[57] I accept these submissions as establishing that it is the Pellettier Defendants who have acted to alter the relationship and thereby the *status quo*.

[58] The plaintiffs have also provided the requested undertaking as to damages.

[59] I am satisfied that based on the strength of the plaintiffs' case, the apparent absence of lawful economic loss by the defendants and the requisite undertakings as to damages that the balance of convenience favours the plaintiffs.

### **Delay**

[60] At the hearing of this motion, I expressed concern over the delay that had taken place in bringing these motions to a hearing. The actions date back to 2007. With the passage of time, the plaintiffs are hard pressed to establish that there is any degree of urgency associated with these actions.

[61] The plaintiffs state that they are not solely responsible for the delay. The Statement of Claim dates back to March 2007. However, the Statement of Defence was not filed until April 2009. Motions for injunctive relief first served in May 2007. Motions to strike were brought pursuant to Rule 39 which resulted in the plaintiffs having to provide further affidavits. There were also delays associated with the defendants changing counsel and further delays in conducting the cross-examinations.

[62] The fact of delay should be considered in the context of the entire action. In this case, it is necessary to consider whether the defendant has been prejudiced by the delay. It would appear from the references at paragraph 13 of Mr. Reason's affidavit, that the delay did not prejudice Mr. Pelletier as it resulted in Mr. Pelletier having an additional two to three years in which to operate his business, to his benefit.

### **Conclusion and Disposition**

[63] I have been satisfied that the plaintiffs have established a strong *prima facie* case that the real business of Mr. Pelletier was not in operating legitimate FTA services, but rather, was in operating the HashHU Website as a piracy website and further that the Pelletier Defendants aided and abetted the sale and selling of Piracy Technology. The requested relief is, in the circumstances, appropriate.

[64] In the result, orders shall issue granting the requested injunctive relief in both actions.

### **COSTS**

[65] At paragraphs 5 – 9 of his factum, Mr. Wagman makes costs submissions relating to the motions to strike. His Bill of Costs for these motions, which did not proceed, requested costs of \$17,062.50.

[66] Ms. Bambrough in her costs outline for the plaintiffs' motion requests \$69,680.42 inclusive of disbursements of \$4,129.97 and GST.

[67] In response to the motions to strike, the plaintiffs filed further affidavits to address the concerns raised by Mr. Wagman. It follows that the defendants are entitled to certain costs.

[68] The costs requested by the plaintiffs on their motions should be reduced to reflect a duplication of effort relating to the preparation of affidavits. A further reduction is also warranted to take into account that the delay in bringing on this motion for a hearing undoubtedly resulted in a duplication of effort, resulting from having to periodically review the file in order to remember the salient facts.

[69] I have considered the submissions filed by the parties and I have also taken into account the facts enumerated under Rule 57, including the time spent, the results achieved and the complexity of the matter. In addition, I have also taken into account the principles set forth by the Court of Appeal in *Boucher v. Public Accountants Council for the Province of Ontario* (2004), 71 O.R. (3rd) 291 (C.A.), specifically that the overall objective of fixing costs is to fix an amount that is fair and reasonable for an unsuccessful party to pay in the particular circumstances, rather than an amount fixed by actual costs incurred by the successful litigant.

[70] The plaintiffs are entitled to their costs of these motions, in the cause, which I fix at \$50,000. From this amount, \$7,500 is to be deducted to account for a costs award in favour of the defendants in respect of costs incurred in the preparation of the motion to strike.

[71] The net amount of the costs award is \$42,500 payable to the plaintiffs in the cause.

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MORAWETZ J.

**Date:** May 11, 2010

**SCHEDULE A****SUMMARY OF KEY EVIDENCE ESTABLISHING THAT LANCE PELLETTIER IS “PARAMOUNT”**

<b>NO.</b>	<b>EVIDENCE</b>	<b>SOURCE</b>	<b>PELETTIER’S RESPONSE</b>	<b>COMMENTS</b>
1.	Pellettier’s actual date of birth is March 27, 1988. The user “Paramount” used to display this same date of birth on the HashHU Web Site but, after the Plaintiffs’ Statements of Claim were served, “Paramount’s” date of birth was changed to March 1, 1988.	Winslade Affidavit, para. 7(b) Caban Affidavit, para. 6 and Exhibit “D” Cross-examination of Pellettier, page 9, question 20	No credible explanation has been offered by Pellettier.	Suggests Pellettier changed “Paramount’s” date of birth in an attempt to hide the fact that he is “Paramount”.  It is not credible to suggest that Paramount’s original use of Pellettier’s date of birth is a coincidence, or that the fact that “Paramount’s” date of birth was changed after Pellettier was served with the Plaintiffs’ Statements of Claim is a coincidence.
2.	Pellettier leases a 2005 Dodge Viper, for which a PPSA registration in the amount of approximately \$125,000 was made on May 31, 2006. The user “Paramount” stated in an October 11, 2006 post that he had purchased a vehicle from Dodge about 5 months ago (which corresponds to the May 31, 2006 PPSA registration date).	Winslade Affidavit, paras. 7(c)(i), 9 and 10 and Exhibits “E” and “F” Cross-examination of Pellettier page 10, question 25	“Paramount” stated that he purchased the vehicle, whereas Pellettier actually leases the vehicle.	There are many reasons why someone would say that they purchased an expensive vehicle which they, in fact, only lease, including their intention to buy out the vehicle at the end of the lease and the pride that comes with ownership.
3.	Pellettier was observed putting air in the tires of his Dodge Viper within 3 months of “Paramount” making a post complaining of a chronic air leak in one of the tires of his “new car from Dodge”. “Paramount” also complained about other problems with	Winslade Affidavit, para. 12 and Exhibit “F”	Pellettier alleges that he had to put air in his tires on the date that he was observed doing so because his car had been sitting outside unused for some period of time. However, Pellettier also acknowledged having to put air in his tires on at least one	This is another piece of evidence linking Pellettier to “Paramount”. Pellettier refused to disclose the contact information for the mechanic who admittedly performed work on his Dodge Viper during the period of time in question. An adverse inference should be drawn from this refusal (cross-examination of Pellettier, pages 13-14,

NO.	EVIDENCE	SOURCE	PELLETTIER'S RESPONSE	COMMENTS
	his "new car from Dodge".		other occasion during 2007 (cross-examination of Pellettier, pages 16-17, question 74). Pellettier also acknowledged that other work was performed on his vehicle (cross-examination of Pellettier, page 13, questions 51 and 52), including changing all of the tires on his vehicle (cross-examination of Pellettier, page 16, questions 68, 71 and 73)	question 54).
4.	Pellettier owns a 1967 Black Cadillac Eldorado. The user "Paramount" employs an avatar depicting a similar vehicle. Also, the user "Paramount" stated in the post made on October 11, 2006 that he owned a "much older car from 1966".	Winslade Affidavit, paras. 7(c)(iii), 10 and 11 Cross-examination of Pellettier page 10, question 28	Pellettier's Black Cadillac Eldorado is a 1967 model, whereas "Paramount" stated that he owned a "car from 1966". Pellettier also asserts that anyone can obtain an image of an older Cadillac Eldorado from the Internet and then use it as an avatar.	It is not credible to suggest that the fact that Pellettier and "Paramount" both own Black Cadillac Eldorado's from 1966 or 1967 is a coincidence. Further, it is common knowledge that one can obtain the next year's model vehicle in the preceding year. For example, it is now possible to purchase a 2010 vehicle although it is still 2009. In those circumstances, the 2010 vehicle would be a vehicle "from 2009".
5.	On July 7, 2007, "Paramount" made a post in which he stated that he was "Lance".	Gee Affidavit sworn November 2, 2007, para. 4 and Exhibit "A"	Pellettier denies he made the post but offers no credible explanation for why "Paramount" would state that he is "Lance".	In the same post, "Lance" provides details about what was discussed at a without prejudice meeting which Lance attended with the Plaintiffs. See below.
6.	Pellettier participated in a "without prejudice" meeting with representatives of the Plaintiffs on February 22, 2007, during which he	Gee Affidavit sworn November 2, 2007, paras. 4, 5 and 6	There are certain errors in the post made by "Paramount" (including what donut shop the meeting took place at). Pellettier claims that he	Only Pellettier and the very few individuals to whom Pellettier says he provided accurate, specific and detailed information regarding the meeting would have had the ability to make the subject post. Pellettier's evidence about

NO.	EVIDENCE	SOURCE	PELLETTIER'S RESPONSE	COMMENTS
	<p>was served with the EchoStar Statement of Claim. In his July 7, 2007 post, "Paramount" described many accurate details of what transpired at the without prejudice meeting. The post included such information as the correct date of the meeting, the names of all of the EchoStar Plaintiffs, and the names of the attendees at the meeting, including the names of the companies with which they worked and their positions.</p>	<p>Gee Affidavit sworn December 10, 2007</p>	<p>told a limited number of people about the meeting. He also claims that he carried the Statement of Claim and business cards around with him and showed them to these people. (Cross-examination of Pellettier, pages 36-37, questions 193-194)</p>	<p>carrying the Statement of Claim and business cards around with him and showing them to people is not credible. Pellettier did not file affidavits from, or examine under Rule 39, any of the individuals to whom he says he provided details about the meeting.</p>
7.	<p>The Plaintiffs served Pellettier with their original motion records containing hundreds of pages of posts from satscams, rom 10x, dss-newbies and other web sites on May 18, 2007. The motion records were not filed with the Court until July, 2009.</p> <p>In his July 7, 2007 post, "Paramount" states that almost every post he has ever made has ended up in a binder and been given to "the justice" to read, "not to mention several hundred pages of posts from satscams, rom 10x, dss-newbies, sat junky and so on".</p>	<p>Gee Affidavit sworn November 2, 2007, para. 4 and Exhibit "A"</p>	<p>Pellettier denies that he made the post. He offers no credible explanation as to how anyone else would have obtained the information posted with respect to the contents of the Plaintiffs' three volume motion records, before they were filed with the Court.</p>	<p>On the evidence, only Pellettier and his counsel had access to the posts contained in the Plaintiffs' original motion records.</p>
8.	<p>In his July 7, 2007 post, "Paramount"</p>	<p>Gee Affidavit sworn</p>	<p>No credible explanation has been</p>	<p>It is not credible to suggest that it is a coincidence that</p>

NO.	EVIDENCE	SOURCE	PELETTIER'S RESPONSE	COMMENTS
	<p>referred to the meeting which he had with representatives of the Plaintiff as a "non-prejudice meeting". On his cross-examination Pellettier erroneously referred to the without prejudice meeting as a "non-prejudiced meeting".</p>	<p>November 2, 2007, para. 5 and Exhibit "A" Cross-examination of Pellettier, pages 24-25, questions 118, 120, and page 28, question 140</p>	<p>offered for why Pellettier and "Paramount" would both erroneously describe the meeting as a non-prejudice[d] meeting.</p>	<p>Pellettier and "Paramount" made this similar mistake, but are two different people.</p>
<p>9.</p>	<p>On March 18, 2008, someone employing the username "hashhu-owner" made a post on the HashHU Web Site stating that he was Jerry Lee Gee (of NagraStar) and making reference to an affidavit which Mr. Gee, in fact, swore on December 10, 2007 and served upon Pellettier, but which was not filed with the Court at the time of the post. Mr. Pellettier admitted on his cross-examination that he did not show the December 10, 2007 affidavit to anyone. The post also refers to the date upon which the Bell ExpressVu Statement of Claim was served on Pellettier, which was not a matter of public record. Pellettier relies upon this post to assert that anyone can post false information on the internet.</p>	<p>Gee Affidavit sworn June 3, 2008, para. 2 and Exhibit "A" Pellettier Affidavit sworn May 16, 2008, paras. 8-9</p>	<p>Pellettier denies that he made this post but offers no credible explanation for why, or how, someone else did so.</p>	<p>It is clear that Pellettier made this post because in it, he refers to Mr. Gee's affidavit sworn December 10, 2007 which, at the time, was not a matter of public record. He also refers to the date upon which he was served with the ExpressVu Statement of Claim. Pellettier admitted on cross-examination that he has not provided a copy of the December 10, 2007 affidavit it to anyone.</p>

NO.	EVIDENCE	SOURCE	PELETTIER'S RESPONSE	COMMENTS
10.	On November 2, 2007, a user named "Paramount" made a series of posts on a forum web site called www.satscams.org in which "Paramount" made reference to the February 22, 2007 without prejudice meeting, these actions and certain motion material which had been served upon Pellettier but not filed with the Court.	Gee Affidavit sworn June 3, 2008, para. 7 and Exhibit "B"	Pellettier denies that he made this post but offers no credible explanation for why, or how, someone else did so.	Once again, the posts contain information known only to Pellettier.

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11.	Three posts were made on the www.anton-pillar.org web site and the www.satscams.org web site which contained private messages that were exchanged between "Lance" of "FTA Source" and a user named "Snatty", which related to "Lance's" purchase of the HashHU Web Site from "Snatty" in the summer of 2005. The two telephone numbers which Lance provided to Snatty so that he could contact him to discuss the purchase of the HashHU Web Site were the telephone numbers of Lance's former residence (being the home owned by his parents) and the toll free number displayed on the FTA Source Web Site. In the exchange, Lance also provides Snatty with the email address "uncharteredwaters@hotmail.com" for the purpose of contacting him.	Gee Affidavit sworn August 22, 2008, paras. 2-6	Pellettier denies exchanging the private messages but offers no credible explanation as to why someone would, or how someone could, fabricate private messages which include Pellettier's parents' home telephone number, Pellettier's business telephone number and one of Pellettier's email addresses.	These private messages evidence Pellettier's purchase of the HashHU Web Site in the summer of 2005.  Jeffrey Reason states in his affidavit (described below) that Pellettier used the email address "uncharteredwaters@hotmail.com" when communicating with him.
12.	Many users of the HashHU Web Site refer to its owner as a young man named "Lance".	Caban Affidavit, several paragraphs and numerous exhibits	Essentially, Pellettier argues that "just because it's on the Internet doesn't make it so".  Pellettier offers no credible explanation as to why so many people would be implicate him as the owner of the HashHU Web Site,	These posts are corroborative of the other evidence adduced by the Plaintiffs and, in addition, given the number of users who refer to the owner of the HashHU Web Site as being "Lance" it is not credible to suggest this is a mere coincidence.

NO.	EVIDENCE	SOURCE	PELETTIER'S RESPONSE	COMMENTS
			to the point where it is common knowledge.	
13.	Pelletier admitted on cross-examination that the HashHU Web Site is a piracy forum web site. He also admitted advertising the business of FTA Source on that web site.	Cross-examination of Pelletier, pages 71, questions 390-391, page 47, question 251, and page 75, question 410	Admitted by Pelletier.	This evidence confirms that Pelletier has had business dealings which involve the HashHU Web Site.
14.	On March 19, 2007, after Pelletier had been served with the Statements of Claim, a thread entitled "New Policy Regarding Files and Keys" was commenced by an "Administrator" known as "giantsv". The policy stated that the only files that could be uploaded onto the HashHU Web Site were factory files and loaders.	Caban Affidavit, para. 11 and Exhibit "H"	Pelletier has offered no credible explanation for this evidence.	This evidence suggests that Pelletier is "Paramount" and that he took this step in order to attempt to avoid liability, once he became aware of the Plaintiffs' claims.
15.	On or around March 27, 2007, after Pelletier had been served with the Statements of Claim, the HashHU Web Site added a new "Legal Disclaimer and Limitation of Liability" that is displayed to users prior to gaining access to the HashHU Web Site and forums.	Caban Affidavit, para. 13 and Exhibit "K"	Pelletier denies owning the HashHU Web Site and denies having any knowledge about the new disclaimer.	This evidence suggests that Pelletier is "Paramount" and that he took this step in order to attempt to avoid liability, once he became aware of the Plaintiffs' claims.

NO.	EVIDENCE	SOURCE	PELLETTIER'S RESPONSE	COMMENTS
16.	On or around April 10, 2007, after Pelletier had been served with the Statements of Claim, approximately 270 posts made by "Paramount" and 1,095 discussion threads were suddenly deleted from the HashHU Web Site.	Cavan Affidavit, para. 10 and Exhibit "G"	Pelletier has offered no credible explanation for this evidence.	This evidence suggests that Pelletier is "Paramount" and that he took this step in order to attempt to avoid liability, once he became aware of the Plaintiffs' claims.

NO.	EVIDENCE	SOURCE	PELLETTIER'S RESPONSE	COMMENTS
17.	<p>David Fuss ("Fuss"), a former distributor of FTA receivers, was contacted by Pellettier and told by him that he had purchased HashHU Web Site for \$10,000.00 USD. This was after Fuss was contacted by Robert Ward about buying the web site. Thereafter, Fuss agreed to advertise his Ariza-brand FTA receivers on the HashHU Web Site. Fuss purchased banner ads on the HashHU Web Site from Pellettier on a number of occasions between May 2006 and late 2007 and arranged for one of two of his named former employees to pay Pellettier, in cash, for the advertisements. Fuss has produced copies of certain email messages which evidence one of these transactions. The email address which Pellettier used when communicating with Fuss was uncharteredwaters@hotmail.com. Pellettier also admitted to Fuss that he posts on the HashHU Web Site using the name "Paramount". Fuss paid legal fees of approximately \$20,000.00 on Pellettier's behalf.</p>	<p>Fuss Affidavit, paras. 7-13 Gee Affidavit, sworn August 22, 2008, para. 2 and Exhibit "A" Pellettier admitted on his cross-examination that he has had business dealings with Fuss and that Fuss paid some of his legal fees (at page 68, questions 370-371)</p>	<p>Pellettier has failed to deliver any evidence in response to the Fuss affidavit. He also failed to cross-examine Fuss, or examine either of the two named employees under Rule 39. Pellettier argues that Fuss was previously involved in satellite piracy, but yet he also admits knowing him, having some business dealings with him and receiving money from him to pay for his legal fees.</p>	<p>Fuss' evidence is uncontradicted and unchallenged by Pellettier, and should be accepted as undisputed evidence that Pellettier is the owner of the HashHU Web Site and posts under the user name "Paramount". An adverse inference should be drawn from Pellettier's failure to respond to Fuss' evidence, and from his admitted involvement with someone involved in satellite piracy.</p> <p>Pellettier may argue that there is an error in the Fuss affidavit, insofar as Fuss states that he was approached to buy the HashHU Web Site in the Spring of 2006 rather than the Spring of 2005. However, Fuss' evidence that he was offered an opportunity to purchase the HashHU Web Site, before Pellettier was, is corroborated by one of "Snatty's" private messages, in which Snatty notes that the web site had been offered to Fuss "a few months ago" and that Fuss merely wanted to place ads on the web site.</p>

NO.	EVIDENCE	SOURCE	PELLETTIER'S RESPONSE	COMMENTS
18.	Jeffrey Reason ("Reason"), a former owner of two web sites relating to satellite piracy, was told by an individual named Robert Ward, and Pellettier, that Pellettier purchased the HashHU Web Site for \$10,000.00 in August, 2005. Reason was granted access to HashHU chat rooms wherein members openly discussed the fact that Lance was the owner of the HashHU Web Site and the user name "Paramount".	Reason Affidavit, paras. 4, 6-7	Pellettier has failed to deliver any evidence in response to the Reason affidavit and has failed to cross-examine Reason. Pellettier will argue that Reason was previously involved in satellite piracy. Pellettier has offered no explanation for the content of Reason's affidavit.	Reason's evidence is uncontradicted and unchallenged and should be accepted as undisputed evidence that Pellettier is the owner of the HashHU Web Site and posts under the user name "Paramount".
19.	Reason engaged in an MSN chat with Pellettier during which Pellettier was using the email address: "uncharteredwaters@hotmail.com". In this chat, Reason and Pellettier discussed whether Pellettier should sell the email list for the HashHU Web Site, Pellettier's request to become an administrator of the Satscams Web Site and Pellettier's attempt to register on the Satscams Web Site using his nickname "Paramount".	Reason Affidavit, para. 8 and Exhibit "A"	Pellettier has failed to deliver any evidence in response to the Reason affidavit and has failed to cross-examine Reason. Pellettier has offered no explanation for the content of his communication with Reason.	Reason's evidence is uncontradicted and unchallenged and should be accepted as undisputed evidence that Pellettier is the owner of the HashHU Web Site and posts under the user name "Paramount". Reason's evidence is corroborated by the attached MSN chat.
20.	Reason engaged in a further MSN chat with Pellettier in which Pellettier used the email address:	Reason Affidavit, para. 9 and Exhibit "B"	Pellettier has failed to deliver any evidence in response to the Reason affidavit and has failed to cross-	Reason's evidence is uncontradicted and unchallenged and should be accepted as undisputed evidence that Pellettier is the owner of the HashHU Web Site and posts under the user

NO.	EVIDENCE	SOURCE	PELLETTIER'S RESPONSE	COMMENTS
	"uncharteredwaters@hotmail.com" and in which Pellettier acknowledged purchasing the HashHU Web Site for \$10,000.00.		examine Reason. Pellettier has offered no explanation for the content of his communication with Reason.	name "Paramount". Reason's evidence is corroborated by the attached MSN chat.
21.	On March 17, 2007, Reason recorded a telephone conversation with Pellettier, in which the possibility of the Plaintiffs gaining access to the database for the HashHU Web Site was discussed.	Reason Affidavit, para. 12 and Exhibits "C" and "D"	Pellettier has failed to deliver any evidence in response to the Reason affidavit and has failed to cross-examine Reason. Pellettier has offered no explanation for the content of his communication with Reason.	Reason's evidence is uncontradicted and unchallenged and should be accepted as undisputed evidence that Pellettier is the owner of the HashHU Web Site and posts under the user name "Paramount". Reason's evidence is corroborated by the audio recording of his discussion with Pellettier.
22.	Reason had a further MSN chat with Pellettier on April 3, 2007, in which they discussed Pellettier's strategy in the litigation with the Plaintiffs, Pellettier's use of the name "Paramount" and Pellettier's request that Reason send an email to a potential client regarding advertising on the HashHU Web Site (so that Pellettier would not have to use the FTA Source email address or the unchartered waters email address).	Reason Affidavit, para. 14 and Exhibit "H"	Pellettier has failed to deliver any evidence in response to the Reason affidavit and has failed to cross-examine Reason. Pellettier has offered no explanation for the content of his communications with Reason.	Reason's evidence is uncontradicted and unchallenged and should be accepted as undisputed evidence that Pellettier is the owner of the HashHU Web Site and posts under the user name "Paramount". Reason's evidence is corroborated by the attached MSN chat.