

COPYRIGHT

PRACTICE

Motion seeking interlocutory mandatory injunction against third party respondent Internet Service Providers (ISPs) compelling innocent third party respondents to take steps to block their customers from accessing websites, Internet services operated by anonymous defendants — Plaintiffs/moving parties Canadian broadcasting companies either owning Canadian rights or are exclusive licensees of rights to broadcast variety of television programming — Broadcasting done via television, through online broadcasting or streaming services — Despite issuance of previous interim, interlocutory injunctions some services provided by defendants remaining in operation, alleged infringement continuing — Plaintiffs seeking “site-blocking order”, never previously issued in Canada — Main issue whether Court having jurisdiction to issue site-blocking order — Court’s equitable jurisdiction encompassing authority to issue injunction in nature sought by plaintiffs — *Federal Courts Act*, R.S.C., 1985, c. F-7, ss. 4, 44 establishing Court as court of equity, granting it injunction power subject only to condition that injunction be “just and convenient” — Injunctions equitable remedies; powers of court with equitable jurisdiction unlimited, not restricted to any area of substantive law, enforceable through court’s contempt power — *Norwich* orders, *Mareva* injunctions imposed where parties not themselves engaging in any wrongdoing but in position to facilitate harm — England, Wales Court of Appeal applying this rationale where site-blocking order issued against ISPs — Issue herein not solely one of site blocking — Injunction remedy sought cannot be simply divorced from essential character of underlying copyright infringement action — Provisions in *Telecommunications Act*, S.C. 1993, c. 38, ongoing parliamentary debate about role of site blocking in Canada’s telecommunications regulatory regime not reasons for Court to decline exercising jurisdiction in present case — Plaintiffs having to satisfy test set out in *Manitoba (Attorney General) v. Metropolitan Stores Ltd.*, [1987] 1 S.C.R. 110 (*Metropolitan Stores*); *RJR-MacDonald Inc. v. Canada (Attorney General)*, [1994] 1 S.C.R. 311 (*RJR-MacDonald*) wherein interlocutory injunction issued if serious issue to be tried; irreparable harm resulting if injunction not granted; balance of convenience favouring plaintiffs — Appropriate to seek guidance from United Kingdom case law — *Cartier International AG v. British Sky Broadcasting Ltd.*, [2016] EWCA Civ. 658 (BAILII) (*Cartier*) endorsing number of relevant principles or factors in determining if site-blocking order proportional, e.g. necessity, effectiveness, dissuasiveness — Necessity factor closely linked to irreparable harm branch of test — Remaining factors assisting in assessing balance of convenience, determining what is just, equitable in considering legitimate but conflicting interests herein — Regarding serious issue, evidence disclosing strong *prima facie* case of copyright infringement by defendants — Plaintiffs establishing irreparable harm resulting if injunction not granted — With respect to balance of convenience, order sought likely to reduce overall access to infringing services, effective means of protecting plaintiffs’ rights, limiting harm — After considering *Cartier* factors, recognizing legitimate competing interests arising in context of relief being sought, Court satisfied balance of convenience favouring plaintiffs in present matter — Terms of order amended — Motion granted.

BELL MEDIA INC. V. GOLDTV.BIZ (T-1169-19, 2019 FC 1432, Gleeson J., reasons for judgment dated November 15, 2019, 45 pp.)