

S-098374

No:
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

TELUS COMMUNICATIONS COMPANY

PLAINTIFF

AND:

ROGERS COMMUNICATIONS INC.

DEFENDANT

WRIT OF SUMMONS

PLAINTIFF: TELUS Communications Company
c/o Farris, Vaughan, Wills & Murphy LLP
2500-700 West Georgia Street
Vancouver, BC
V7Y 1B3

DEFENDANT: Rogers Communications Inc.
2900 – 550 Burrard Street
Vancouver, BC
V6C 0A3

2009/11/12 09:56:03 RISE 005.00
21-12-098374

ELIZABETH THE SECOND, by the Grace of God, of the United Kingdom, Canada and Her other Realms and Territories, Queen, Head of the Commonwealth, Defender of the Faith.

To the Defendant **Rogers Communications Inc.**

TAKE NOTICE that this action has been commenced against you by the Plaintiff(s) for the claims set out in this Writ.

IF YOU INTEND TO DEFEND this action, or if you have a set-off or counterclaim that you wish to have taken into account at the trial, YOU MUST

- (a) GIVE NOTICE of your intention by filing a form entitled "Appearance" in the above registry of this Court, at the address shown below, within the Time for Appearance provided for below and YOU MUST ALSO

DELIVER a copy of the Appearance to the Plaintiff's address for delivery, which is set out in this Writ, and

- (b) if a statement of claim is provided with this Writ of Summons or is later served on or delivered to you, FILE a Statement of Defence in the above registry of this court within the Time for Defence provided for below and DELIVER a copy of the Statement of Defence to the Plaintiff's address for delivery.

YOU OR YOUR SOLICITOR may file the Appearance and the Statement of Defence. You may obtain a form of Appearance at the Registry.

JUDGMENT MAY BE TAKEN AGAINST YOU IF

- (a) YOU FAIL to file Appearance within the Time for Appearance provided for below, or
- (b) YOU FAIL to file the Statement of Defence within the Time for Defence provided for below.

TIME FOR APPEARANCE

If this Writ is served on a person in British Columbia, the time for Appearance by that person is 7 days from the service (not including the day of service).

If this Writ is served on a person outside British Columbia, the time for Appearance by that person after service, is 21 days in the case of a person residing anywhere within Canada, 28 days in the case of a person residing in the United States of America, and 42 days in the case of a person residing elsewhere.

[or, if the time for Appearance has been set by order of the court, within that time.]

TIME FOR DEFENCE

A Statement of Defence must be filed and delivered to the Plaintiff within 14 days after the later of

- (a) the time that the Statement of Claim is served on you (whether with this Writ of Summons or otherwise) or is delivered to you in accordance with the Rules of Court, and
- (b) the end of the Time for Appearance provided for above.

[or, if the time for Defence has been set by order of the court, within that time.]

The address of the registry is:

800 Smithe Street
Vancouver, British Columbia
V6Z 2E1

The Plaintiff's ADDRESS FOR DELIVERY is:

Farris, Vaughan, Wills & Murphy LLP
Barristers & Solicitors
2500 – 700 West Georgia Street
Vancouver, British Columbia
V7Y 1B3

Fax number for delivery (if any): (604) 661-9349

The name and office address of the Plaintiff's Solicitor is:


Farris, Vaughan, Wills & Murphy LLP
Barristers & Solicitors
2500 – 700 West Georgia Street
Vancouver, British Columbia
V7Y 1B3

Attention: Robert S. Anderson, Q.C.

The Plaintiff's claim is set out in the attached Statement of Claim

November 12, 2009

Dated


Solicitor for the Plaintiff

No:
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

TELUS COMMUNICATIONS COMPANY

PLAINTIFF

AND:

ROGERS COMMUNICATIONS INC.

DEFENDANT

STATEMENT OF CLAIM

Parties

1. The Plaintiff, TELUS Communications Company ("TELUS"), is a partnership formed under the laws of British Columbia with an office in British Columbia at 2100 – 3777 Kingsway Avenue, Burnaby, BC.
2. TELUS provides subscribers with a full range of telecommunications products including telephone, internet and wireless services.
3. The Defendant, Rogers Communications Inc. ("Rogers"), is a company incorporated pursuant to the laws of British Columbia with an address for delivery at 2900 – 550 Burrard Street, Vancouver, BC.
4. Rogers provides wireless services nationally under the name Rogers Wireless.

The Wireless Telecommunications Market

5. The telecommunications industry in Canada, and in particular its wireless segment, is very competitive. The three largest wireless providers are TELUS, Rogers and Bell Mobility Inc. ("Bell"). Together they have an approximately 90% share of the wireless

market in Canada. All three companies invest large amounts of money into advertising their respective wireless products and services.

The Introduction of 3.5 Generation Wireless Network Technology

6. TELUS and Bell have historically provided wireless services on wireless networks different from, and incompatible with, the wireless network used by Rogers. TELUS' and Bell's wireless networks have historically been based on a network protocol called "code division multiple access" or "CDMA". Rogers wireless network has been based on a network protocol called "Global System for Mobile communications" or "GSM".
7. Over time, TELUS' and Bell's wireless networks, and Rogers' wireless network, have each adopted new competing technologies, called "generations", in pursuit of faster and better wireless transmission of data.
8. As of 2004, Rogers has been providing national coverage on a 2.0 generation ("2G") wireless network based on the GSM protocol with overlays of newer GSM-based technologies called the General Packet Radio Service ("GPRS") and the Enhanced Data Rates for GSM Evolution ("EDGE"). In 2007, Rogers upgraded portions of its' wireless network to a 3.5 generation ("3G+") technology called High Speed Packet Access ("HSPA") by overlaying the required infrastructure on its existing wireless network in and around 25 Canadian cities, but excluding other areas. On September 14, 2009, Rogers upgraded its' HSPA technology to "HSPA Plus" ("HSPA+"), but only in, at most, Vancouver, Calgary, Toronto, Ottawa and Montreal. (Hereinafter, Rogers' wireless network is collectively referred to as the "Rogers' GSM/GPRS/EDGE/HSPA/HSPA+ Network".)
9. Since 2006, TELUS has operated a 3.0 generation ("3G") wireless network called Evolution-Data Optimized ("EVDO"), which provides national coverage. Bell has similarly operated an EVDO network. TELUS and Bell use each other's EVDO networks to provide national coverage. (Hereinafter the EVDO network used by TELUS referred to as the "TELUS EVDO Network".)

10. On November 5, 2009, TELUS launched its HSPA/HSPA+ wireless network. On November 4, 2009 Bell launched its HSPA/HSPA+ wireless network. TELUS and Bell use each other's HSPA/HSPA+ networks to provide national coverage. (Hereinafter the HSPA/HSPA+ network used by TELUS referred to as the "TELUS HSPA/HSPA+ Network".)
11. TELUS and Bell built the required infrastructure for the new HSPA/HSPA+ network from the ground up, rather than upgrading existing infrastructure, because HSPA and HSPA+ are based on the GSM protocol, and could not be overlaid on the existing EVDO network. The TELUS HSPA/HSPA+ Network is now operating parallel to, rather than overlaid on, the TELUS EVDO Network.
12. The TELUS HSPA/HSPA+ Network makes HSPA and HSPA+ coverage available to a larger percentage of the Canadian population than do the HSPA and HSPA+ portions of Rogers' GSM/GPRS/EDGE/HSPA/HSPA+ Network.

False and Misleading Representation #1 – The Fastest Network Representation

13. Since Rogers introduced HSPA in 2007, and continuing after November 5, 2009, Rogers has been publishing advertisements in at least, but not limited to, its' website Rogers.com and in its' in-store promotional materials, which claim that Rogers provides "Canada's Fastest Network: 2x Faster than Any Other" or variations thereof (the "Fastest Network Representation").
14. The Fastest Network Representation is now both false and misleading.
15. The Fastest Network Representation is designed to create the impression, and does in fact create the impression for wireless communications customers that Rogers' wireless services are faster than all of TELUS' wireless services.
16. However, since November 5, 2009, TELUS has been using a newer HSPA/HSPA+ network than the HSPA/HSPA+ part of the Rogers' GSM/GPRS/EDGE/HSPA/HSPA+ Network. The HSPA/HSPA+ part of the Rogers' GSM/GPRS/EDGE/HSPA/HSPA+ Network is not faster than the TELUS HSPA/HSPA+ Network.

17. Furthermore, the TELUS HSPA/HSPA+ Network provides more coverage to more of Canada than do the HSPA or HSPA+ components of Rogers' GSM/GPRS/EDGE/HSPA/HSPA+ Network.

False and Misleading Representation #2 – the Most Reliable Network Representation

18. Since Rogers introduced HSPA in 2007, and continuing after November 5, 2009, Rogers has been publishing advertisements in at least, but not limited to, the national and local newspapers, its website Rogers.com and its in-store promotional materials, which claim that Rogers provides “Canada’s Most Reliable Network” or variations thereof (the “Most Reliable Network Misrepresentation”).
19. The Most Reliable Network Representation is now both false and misleading.
20. The Most Reliable Network Representation is designed to create the impression, and does in fact create the impression for wireless communications customers that:
 - (a) Rogers’ wireless services provide better call clarity and less dropped calls with respect to voice services than all of TELUS’ wireless services; and
 - (b) Rogers’ wireless services provide more reliable data transmission than all of TELUS’ wireless services.
21. However, since November 5, 2009, TELUS has been using a newer HSPA/HSPA+ network than the HSPA/HSPA+ part of the Rogers’ GSM/GPRS/EDGE/HSPA/HSPA+ Network. The Rogers’ GSM/GPRS/EDGE/HSPA/HSPA+ Network is not more reliable than the TELUS HSPA/HSPA+ Network.
22. Furthermore, the TELUS HSPA/HSPA+ Network provides more coverage to more of Canada than do the HSPA or HSPA+ components of Rogers’ GSM/GPRS/EDGE/HSPA/HSPA+ Network.

Demands Made by TELUS

23. On November 5, 2009, TELUS demanded that Rogers cease making the Fastest Network Representation and the Most Reliable Network Representation. Rogers has refused or neglected to comply with this demand, in whole or in part.

Losses Suffered and Remedies Sought

24. The pre-Christmas months are the busiest time of the year for consumer sales in the wireless service communications market. Due to the economic slowdown in Canada, this year the competition for wireless service communications customers will be even more competitive than normal. Accordingly, advertising related to wireless communication services is even more important than normal during November and December 2009 for the wireless telecommunications industry in Canada. Further, given the economic downturn in Canada, consumers are becoming more price conscious and, as such, the false and misleading Fastest Network Representation and the false and misleading Most Reliable Network Representation are particularly damaging to TELUS.
25. As a result of Rogers' wrongful acts and omissions as set forth herein, the Plaintiff has suffered, and will continue to suffer, loss, damage and expense, including depreciation of its' goodwill and competitive advantage, all of which loss, damage, and expense was and remains reasonably foreseeable.
26. Further, and in the alternative, as a result of Rogers' wrongful acts and omissions as set forth herein, Rogers has been enriched and the Plaintiff has been correspondingly deprived, all without juristic reason.
27. The Plaintiff pleads and relies on the *Competition Act*, R.S.C. 1985, c. C-34, in particular that Rogers' wrongful acts and omissions as set forth herein constitute violations of section 52 of the *Competition Act* and that TELUS is entitled to commence proceedings pursuant to section 36 of the *Competition Act*.
28. On the basis of the above, the Plaintiff claims as follows:

- (a) A declaration that Rogers breached section 52 of the *Competition Act* when it published or otherwise distributed to the public advertising or other materials based on the wireless networks presently available to wireless customers of TELUS and Rogers and containing:
 - (i) A statement that Rogers provides “Canada’s Fastest Network: 2x Faster than Any Other” or any other statements or claims, whether express or implied, that create the impression that Rogers can provide faster wireless network data transmission than TELUS; or
 - (ii) A statement that Rogers provides “Canada’s Most Reliable Network” or any other statements or claims, whether express or implied, that create the impression that Rogers can provide more reliable wireless services than TELUS;

- (b) An interim, interlocutory and permanent injunction restraining, enjoining and prohibiting Rogers, by itself, its partners, its servants, its agents or otherwise, including anyone acting on behalf of Rogers or on Rogers’ instructions, from directly or indirectly publishing or otherwise distributing to the public advertising or other materials based on the wireless networks presently available to wireless customers of TELUS and Rogers and containing:
 - (i) A statement that Rogers provides “Canada’s Fastest Network: 2x Faster than Any Other” or any other statements or claims, whether express or implied, that create the impression that Rogers can provide faster wireless network data transmission than TELUS; or
 - (ii) A statement that Rogers provides “Canada’s Most Reliable Network” or any other statements or claims, whether express or implied, that create the impression that Rogers can provide more reliable wireless services than TELUS;

- (c) Further, or in the alternative, an interim, interlocutory and permanent injunction requiring Rogers to take all steps necessary to withdraw from public circulation

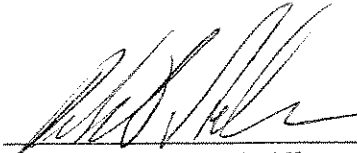
any advertising or other materials based on the wireless networks presently available to wireless customers of TELUS and Rogers and containing:

- (i) A statement that Rogers provides “Canada’s Fastest Network: 3x Faster than Any Other” or any other statements or claims, whether express or implied, that create the impression that Rogers can provide faster wireless network data transmission than TELUS; or
- (ii) A statement that Rogers provides “Canada’s Most Reliable Network” or any other statements or claims, whether express or implied, that create the impression that Rogers can provide more reliable wireless services than TELUS;
- (d) Further, and in the alternative, general, aggravated, exemplary and punitive damages;
- (e) Further, and in the alternative, the full cost to TELUS of investigating Rogers’ wrongful conduct, and of these proceedings;
- (f) Further, in the alternative, restitutionary relief, including equitable damages and compensation;
- (g) Further, and in the alternative, as the Plaintiff may elect, an accounting of Rogers’ profits as a result of its wrongful conduct, and judgment for the amount found due on the taking of that accounting;
- (h) Interest, pursuant to the *Court Order Interest Act*, R.S.B.C 1996, c. 79;
- (i) Costs; and
- (j) Such further and other relief as this Honourable Court may deem just.

Place of Trial: Vancouver, BC

November 12, 2009

Dated



Solicitor for the Plaintiff

THIS STATEMENT OF CLAIM is filed and delivered by Robert S. Anderson, Q.C., of the firm Farris, Vaughan, Wills & Murphy LLP, Barristers & Solicitors, whose place of business and address for service is 2500 – 700 West Georgia Street, Vancouver, British Columbia, V7Y 1B3. Telephone: (604) 684-9151. Facsimile: (604) 661-9349. **Attention: Robert S. Anderson, Q.C.**