

Federal Court



Cour fédérale

Date: 20241023

Docket: T-2304-24

Citation: 2024 FC 1684

Ottawa, Ontario, October 23, 2024

PRESENT: The Honourable Justice Fuhrer

BETWEEN:

INDIGO BOOKS & MUSIC INC.

Moving Party / Plaintiff

and

**JOHN DOE 1 dba INDIGO KILLS KIDS,
JOHN DOE 2 dba INDIGOKILLSKIDS.CA, and
JOHN DOE 3 dba INDIGOKILLSKIDS.COM**

Defendants

ORDER

UPON the Plaintiff's amended notice of return of motion for an interlocutory injunction against the Defendants pursuant to section 44 of the *Federal Courts Act*, RSC 1985, c F-7, subsection 34(1) of the *Copyright Act*, RSC 1985, c C-42, and subsection 53.2(1) of the *Trademarks Act*, RSC 1985, c T-13, filed on October 8, 2024 and heard on October 22, 2024;

AND UPON reading the Plaintiff's supporting material for the motion originally filed on September 11, 2024 and for the return of motion filed on October 8, 2024, including the affidavits of Damien Liddle and Colleen Stanley, the additional affidavits of Andrew Johnstone and Damien Liddle, and the affidavit of Riley Sun, and the pleadings and proceedings to date;

AND UPON hearing the submissions of counsel for the Plaintiff, and noting that the Defendants, who were served with the amended notice of return of motion, are unrepresented, have not defended the action, and were absent from the hearing;

AND UPON noting the interlocutory domain blocking order having neutral citation 2024 FC 1683 [DNS Order] issued in this matter contemporaneously with this Order for an interlocutory injunction against the John Doe Defendants, and referring to the Overview and Applicable Principles (as the latter relates, in particular, to interlocutory injunctive relief), the Evidentiary Findings, and the Analysis (as it relates, in particular, to interlocutory injunctive relief) in the reasons for the DNS Order;

AND UPON finding that there is at least a serious issue to be tried, if not a *prima facie* case, based on the evidence presented by the Plaintiff, that the Plaintiff will suffer irreparable harm if the requested relief is not granted, and that the balance of convenience favours the Plaintiff, the Plaintiff thus satisfying the well settled conjunctive three-part test for an interlocutory injunction; *RJR-MacDonald Inc v Canada (Attorney General)*, 1994 CanLII 117 (SCC), [1994] 1 SCR 311; *Janssen Inc v Abbvie Corporation*, 2014 FCA 112 at para 14;

THIS COURT ORDERS that:

1. The Defendants, John Doe 1, John Doe 2, and John Doe 3, by themselves or by their employees, representatives and agents, or by any company, partnership, trust, entity or person under their authority or control, or with which they are associated or affiliated, must, pending a trial or other resolution on the merits, immediately comply with the following for a period of two (2) years from the date of this Order:
 - (a) take down and cease operating or carrying on business through the infringing website domains and subdomains identified in Schedule 1 of this Order (the “**Infringing Domains**”) and any confusingly similar domains, subject to any subsequent variance to this Order or amendment to Schedule 1;
 - (b) take down and cease operating the website hosted at www.indigokillskids.ca (the “**Infringing Websites**”) and any other website, domain or subdomain that is

being used to provide access to, or redirect or forward to, the website, webpages, and/or website content of the Infringing Domains;

- (c) take down and remove all copies of the infringing material, including any mark, design, word, title or name that uses or infringes the Plaintiff's INDIGO Marks (as defined in the DNS Order) or !NDIGOKIDS Work (as defined in the DNS Order), or any confusingly similar marks or substantial copies of works, including from:
 - i. the Infringing Website, and any other website, domain, subdomain that is being used by the John Doe Defendants to publish infringing material or content;
 - ii. the Instagram accounts @indigokillskids and @indigokillskids.ca;
 - iii. the Tiktok account @indigokillskids; and
 - iv. the X Corp. (formerly Twitter) account @indigokillskids;
- (d) and to cease these infringing activities on any other websites or social media accounts for the duration of the two (2) year period or further Order of the Court.

2. Schedule 1 to this Order and the list of Infringing Domains may, with leave of the Court, be updated through the following mechanism:

- (a) The Plaintiff may serve and file a motion to amend Schedule 1 to add additional domains and subdomains, with appropriate evidence and submissions to support the motion, including affidavit and/or any other admissible evidence demonstrating a strong *prima facie* case of infringement in the domain name or website content of the additional domain(s) and subdomain(s).
- (b) The Plaintiff may bring a motion to amend, extend or terminate this injunctive relief in the event that the Infringing Domains or Subdomains identified in Schedule 1 are transferred to the Plaintiff before the expiry of the two (2) years or in the event that these proceedings are terminated by way of discontinuance, settlement or final judgment before the expiry of the two (2) years or the Plaintiff

requires additional time to pursue a final determination of the underlying proceeding.

"Janet M. Fuhrer"

Judge

Schedule 1 – Infringing Domain(s) and Subdomain(s)

Infringing Domain(s)
Indigokillskids.ca
Indigokillskids.com
Infringing Subdomain(s)
x.com/indigokillskids/
instagram.com/indigokillskids/
instagram.com/indigokillskids.ca/
tiktok.com/@indigokillskids/