

**IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY**

CIV 2009-404-7658

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| BETWEEN | FINDA LIMITED First Plaintiff |
| AND | YELLOW PAGES GROUP LIMITED Second Plaintiff |
| AND | IMAGE MARKETING GROUP LIMITED First Defendant |
| AND | ONLINE BUSINESS DIRECTORY (NZ) LIMITED Second Defendant |

Hearing: 14 December 2009

Appearances: M C Hayes for the Plaintiffs
No appearance for the Defendants

Judgment: 14 December 2009

ORAL JUDGMENT OF WOODHOUSE J

Solicitors / Counsel / Parties:
Mr M C Hayes, Barrister, Auckland
Mr K W McLeod, A J Park, Solicitors, Auckland
Mr B Battles, Image Marketing Group Limited, North Shore City

[1] The plaintiffs seek an interim injunction and other orders against the first defendant, Image Marketing Limited.

[2] The proceedings have been served on the first defendant. Its director, Mr Battles, appeared at the first calling of the application on 26 November 2009. On that date, on Mr Battles' application, the proceeding was adjourned to 9 December 2009 to give Image Marketing time to obtain legal representation.

[3] There was no appearance for Image Marketing on 9 December 2009. However, a fax had been received by the Court from Mr Battles dated 8 December 2009. Mr Battles in the fax asked that the case "be postponed until the new year". He said that Image Marketing "had tried unsuccessfully to obtain legal representation, but not through lack of trying". He also said, and this is relevant on an application for an interim injunction:

We have been unable to fund a retainer in the past two weeks to be able to secure a lawyer to even look at the case for us or to appear on the companies [sic] behalf.

[4] The interim injunction orders are sought in respect of the business directories compiled and published by the two plaintiffs. The evidence makes clear that substantial work has gone into the compilation in particular of these business directories. This includes what is described as an "ontology of business classifications", which is a specific classification of types of listed goods and services. There is also a sophisticated geographical listing. These, and other matters, point to a strong case for a claim of copyright in the works in question.

[5] The evidence is that Image Marketing compiles licences and sells a business directory or business directory databases. This is defined in the proceeding before the Court as NZ Data Database. The current version is described as "NZ Data Database Version 3.0".

[6] The plaintiffs contend that this database has been created by copying the plaintiffs' copyright works, either in whole or in substantial part. There is presently

before the Court uncontradicted evidence to that effect and it is sufficient evidence for me to rely on for present purposes.

[7] In the usual way, notice had earlier been given to Image Marketing of the plaintiffs' contention of breach of copyright with a request that Image Marketing cease and desist from its infringement. Image Marketing, through Mr Battles, has rejected the contentions and refuses to agree to any of the requests from the plaintiffs.

[8] In these circumstances I am satisfied that orders A, B, and D sought by the plaintiffs should be made subject to one change. The change is that the words in the present application "NZ Data Database" should be extended to read "NZ Data Database Version 3.0".

[9] The order labelled C seeks a mandatory order that Image Marketing cancel all licences it has granted for its database. I expressed reservations to Mr Hayes about an order of that nature affecting third parties who will, presumably, have paid for a licence and who are not before the Court. These are not concerns going to the strength of the plaintiffs' case but to the fact that these parties will be adversely affected and they have not been given notice of the orders sought. I recognise that the plaintiffs are not presently able to give that notice without any particulars of the third parties concerned (save for the second defendant against whom an order is not presently sought). In these circumstances Mr Hayes was content to seek an order that Image Marketing provide full particulars of all licenses it has granted.

[10] I accordingly make a further order that the first defendant forthwith provide to the plaintiffs, in writing, full particulars of all licences the first defendant has granted to any party. Those particulars must contain the full name of the licensees, all particulars of addresses and other means of contacting licensees, the date upon which each licence was granted, and a copy of each licence.

[11] The plaintiffs believe that in some cases Image Marketing may have sold its database. In consequence there will be a further order similar to that just outlined but in respect of any sales by Image Marketing of its database.

[12] The orders that I have just outlined are intended to apply to all versions of the databases created by Image Marketing and either licensed by it or sold by it.

[13] The application for order C is adjourned to the case management conference date for the substantive proceeding, with leave to the plaintiffs to bring that application on earlier.

[14] The plaintiffs seek costs. In the usual way they are entitled to costs. Costs are sought on a 2C basis for the preparation of the application for an interim injunction and the supporting affidavits. I am satisfied that costs on a 2C basis are justified in respect of those matters. A similar conclusion was reached by Allan J in an earlier application by the second plaintiff and associated companies under CIV 2007-404-2839 (minute of 28 November 2007, Auckland High Court).

[15] The plaintiffs are further entitled to costs on a 2B basis in respect of the three appearances that have been required. The plaintiffs are also entitled to the usual and reasonable disbursements.

Peter Woodhouse J