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Filing date: **06/09/2015**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92061150
Party	Plaintiff Fashion TV Programmgesellschaft mbH
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Submission	Motion to Suspend for Civil Action
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Signature	/dunya majeed/
Date	06/09/2015
Attachments	Motion to Suspend.pdf(45562 bytes ) EXHIBIT A.pdf(80812 bytes ) Second Amended Complaint.pdf(258530 bytes ) Ex. A.pdf(37227 bytes ) Ex. B.pdf(327285 bytes ) Ex. C.pdf(562791 bytes ) Ex. D.pdf(449803 bytes ) Ex. E.pdf(19667 bytes ) Ex. F.pdf(104708 bytes ) Ex. G.pdf(189024 bytes ) Ex. H.pdf(151923 bytes ) Ex. I.pdf(170570 bytes ) Ex. J.pdf(978491 bytes ) Ex. K.pdf(45060 bytes ) Ex. L.pdf(22623 bytes ) Ex. M.pdf(2476079 bytes ) Ex. N.pdf(2619753 bytes )

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

FASHION TV PROGRAMMGESELLSCHAFT mbH	)	
	)	
Petitioner/Plaintiff,	)	
	)	Cancellation No. 92061150
v.	)	
	)	Registration No. 2,945,407
BIGFOOT ENTERTAINMENT, INC.,	)	
	)	
Respondent/Defendant.	)	
	)	
	)	

**PETITIONER’S MOTION TO SUSPEND PETITION FOR CANCELLATION  
PENDING OUTCOME OF CIVIL ACTION**

Pursuant to TBMP §510.02(a), Applicant respectfully requests suspension of its petition for cancellation before the Trademark Trial and Appeal Board pending the outcome of F.TV Ltd. and FASHION TV PROGRAMMGESELLSCHAFT MbH v. Bigfoot Entertainment Inc., Civil Action No. 14-cv-9856, filed by F.TV Ltd. in the United States District Court for the Southern District of New York (the “Pending Civil Action”).

Applicant requests suspension of action because the Pending Civil Action seeks cancellation of the trademark that is the subject of this proceeding. Enclosed is a copy of the Second Amended Complaint, annexed as **Exhibit A**. Final trial on the merits in the Pending Civil Action is scheduled for May 2016.

Accordingly, it is respectfully submitted that all further proceedings in connection with the Petition for Cancellation be suspended pending the outcome of the Pending Civil Action.

Dated: June 9, 2015

Respectfully submitted,



Raymond J. Dowd  
DUNNINGTON, BARTHOLOW &  
MILLER LLP  
1359 Broadway, Suite 600  
New York, NY 10018  
(212) 682-8811

**CERTIFICATE OF SERVICE**

Pursuant to C.R.F. §2.111, I hereby certify that a true and correct copy of the foregoing Motion to Suspend was served, via First Class Mail and via email, to counsel for Bigfoot Entertainment Inc. at the following address:

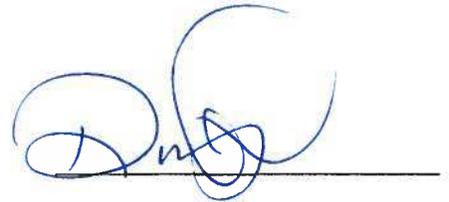
DICKINSON WRIGHT PLLC

1875 EYE STREET, N.W.

SUITE 1200

WASHINGTON, DC 20006

Dated: June 9, 2015



Dunya Majeed

# EXHIBIT A

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X

F.TV Ltd., a British Virgin Islands Corporation and  
FASHION TV PROGRAMMGESELLSCHAFT MbH,

**INDEX NO. 14-CV-9856 (KBF)**

Plaintiffs,

**SECOND AMENDED  
COMPLAINT**

-against-

BIGFOOT ENTERTAINMENT, INC. d/b/a/ FASHION  
TELEVISION INTERNATIONAL, LTD.

Defendants.

-----X

Plaintiffs F.TV (BVI) Ltd. and FASHION TV Programmgesellschaft mbH and (together, “Plaintiffs” or “FTV”), by their attorneys DUNNINGTON, BARTHOLOW & MILLER LLP, respectfully allege as follows, upon knowledge as to themselves and their conduct, and upon information and belief as to all other matters:

**I.**

**PRELIMINARY STATEMENT**

1. This is a civil action brought pursuant to the Lanham Act 15 U.S.C. § 1051 *et. seq.*, and the Declaratory Judgment Act 28 U.S.C. § 2201 seeking a declaratory judgment of non-infringement and abandonment of a certain service mark bearing U.S. Reg. No. 2,945,407 (the “Mark”). The Mark was first used in commerce in 1992, has a priority date of April 17, 1996 and was registered as a Service Mark on the Principal Register in 2005. The Mark was previously used in the United States in connection with a half-hour television program only. A copy of the Mark as filed with the United States Patent and Trademark Office (“USPTO”) is annexed as **Exhibit A**.

2. FTV has lawfully broadcast its fashion-related content in the United States since 1998. Specifically, this Court entered a final judgment in 2002 providing that the term FASHION TELEVISION was generic and that FTV's broadcasts did not infringe upon the pre-existing Mark.

3. As explained below, in 2014 Defendant Bigfoot Entertainment, Inc. entered into a license agreement ("License") and subsequent assignment ("Assignment") with Bell Media, Inc. ("Bell") concerning the Mark. The Assignment included Bell's accrued infringement claims. Specifically, the License provides at page 2 that, with respect to the Mark, "[a]ll legal action shall be at the sole discretion and expense of Bigfoot." The Assignment provides at paragraph 3.1.1 that Bigfoot Entertainment, Inc. is authorized to initiate legal and administrative proceedings concerning the Mark including "the right to sue for, collect and retain damages, interests, profits and costs for past infringement thereof. . .".

4. Commensurate with its entry into the License, Bigfoot created an entity known as Fashion Television International, Ltd. ("FTIL") for the sole purpose of prosecuting the accrued infringement claims concerning the Mark owned by Bell. Bigfoot dominates FTIL to such an extent that FTIL is a mere "alter-ego" of Bigfoot. Bigfoot thereafter immediately caused Fashion Television International, Ltd. to commence a world-wide campaign against FTV including an attack on its website, fashiontv.com, as well as the sending of numerous cease-and-desist letters to FTV and its distributors in New York and elsewhere seeking to terminate FTV's broadcasts in the United States and elsewhere based upon the Mark. For example, Bigfoot has caused FTIL to try to claim the domain name of FTV's website www.fashiontv.com.

5. Because FTV has a reasonable apprehension that Bigfoot will seek to enforce the "past infringement" claims against FTV, FTV is entitled to a declaration that its activities do not infringe any of Bigfoot's or its sub-licensees trademark rights. Accordingly, a case of actual

controversy warranting immediate declaratory relief from this Court is present. Absent declaratory relief, FTV fears that it will be subject to further and continued attacks in the United States that will unfairly cast a cloud over its activities and cause reputational harm.

6. Because the Mark has been declared generic and because it has not been used in commerce for in excess of three years and because the Mark's prior owner abandoned the Mark for non-use and expressed no intention to re-commercialize the Mark, FTV is entitled to a declaration that the Mark is subject to cancellation as generic and/or abandoned. Accordingly, a case of actual controversy warranting immediate declaratory relief from this Court is present. Absent declaratory relief, FTV fears that Bigfoot's anticipated use of the Mark towards establishing a 24/7 television network will cause confusion in the marketplace to FTV's detriment as inconsistent with its continued broadcasts and use of various registered trademarks.

## II.

### PARTIES

7. Plaintiff F.TV Ltd. is a corporation domiciled at P.O. Box 31149 Road Town, Tortola, British Virgin Island, organized under the laws of the British Virgin Islands, engaged in the business of continuous satellite broadcasting and webcasting of a television channel known as FTV throughout the United States and around the world since 1998.

8. Plaintiff FASHION TV Programmgesellschaft mbH is a limited liability company organized and existing under the laws of Austria, having its principal place of business at Wasagasse 4, A-1090 Wien, Austria. Plaintiff FASHION TV Programmgesellschaft mbH is a well-known media corporation in the fashion and entertainment world that conducts direct marketing of its products and services across Europe as well as in the United States. Plaintiff FASHION TV Programmgesellschaft mbH is the exclusive licensee for the United States of certain trademarks

appearing on FashionTV, such as FTV, F, F. L'Original, the "F" Diamond logo, I LOVE FASHION, I LOVE FASHION, F.88, F SHOP, F., F, FTV, FASHIONTV, and FASHION ONE.

9. Defendant BIGFOOT ENTERTAINMENT, INC. d/b/a/ FASHION TELEVISION INTERNATIONAL, LTD. is a Delaware corporation with a principal place of business located at 246 West Broadway, New York, New York 10013. Bigfoot is controlled and operated by Michael Gleissner ("Gleissner") whose world-wide operations are based in New York.

10. FTIL was established by Bigfoot, its sole shareholder, as a Private Limited Company in the United Kingdom on October 8, 2014 for the sole purpose of enforcing Bigfoot's rights under the License. Bigfoot controls FTIL from its New York office. FTIL is one of several undercapitalized and therefore judgment-proof entities formed by Gleissner for the purpose of asserting specious claims against FTV.

### **III.**

#### **JURISDICTION AND VENUE**

11. This Court has jurisdiction over this action pursuant to 15 U.S.C. § 1121 (actions arising under the Federal Lanham (Trademark) Act, 28 U.S.C. § 1338(a) (acts of Congress relating to trademarks) and 28 U.S.C. §1332(a) (diversity of citizenship).

12. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b) and (c) because Bigfoot has its principal place of business at 246 West Broadway in the City, County and State of New York within the District and the acts complained of took place in this District.

**IV.**

**FACTS**

**A. FTV’s Broadcasts In The United States Do Not Infringe Upon The Mark Based Upon This Court’s 2002 Final Judgment**

13. FTV is a 24/7 television network launched from Paris in 1997 that has been broadcasting high-quality fashion content continuously through, among others, television, cable, satellite and more recently on social media such as YouTube, where it enjoys tremendous international success. FTV has been available in the United States since 1998.

14. FTV broadcasts are identified by source identifiers including a unique diamond-shaped logo, the marks FASHIONTV, FTV, and “F” enclosed in a diamond logo, and distinctive graphics and colors that serve as source identifiers as defined by Section 43 of the Lanham Act. 15 U.S.C. § 1125.

15. As set forth above, the Mark was first used in commerce in 1992 and registration with the USPTA was sought in May 9, 1996 by Bigfoot’s predecessor, CHUM, Ltd., (“CHUM”) a former Canadian entity. *See* Exhibit A. The Mark is reproduced below.



16. In 1998, shortly after it launched in the United States, FTV was sued – unsuccessfully – by CHUM which claimed to own, among other things, the mark FASHION TELEVISION.

Specifically, CHUM's Amended Complaint was premised on, among other things, CHUM's ownership of a trademark application for the Mark. A copy of the Amended Complaint is annexed as **Exhibit B** and the foregoing allegation is contained in ¶ 7).

17. On March 12, 2001, Judge Kimba Wood determined that CHUM's use of FASHION TELEVISION was generic and that FTV's marks and broadcasts were not infringing on Chum's trademark rights. *Chum Limited v. Lisowski*, 98-CV-5060, 2001 WL 243541 (S.D.N.Y. March 12, 2001). A copy of Judge Wood's order is annexed as **Exhibit C**.

18. Following a bench trial, Judge Constance Baker Motley held that none of FTV's broadcasts or uses of marks or words containing "F," "F.TV," "TV," "TELEVISION," or "FASHION" competed unfairly with CHUM and its claimed ownership of the mark FT FASHION TELEVISION or any other mark or goodwill claimed by CHUM. *Chum Ltd. v. Lisowski*, 198 F.Supp.2d 530 (S.D.N.Y. April 18, 2002) *rehearing denied* 2002 WL 1143208, 63 U.S.P.Q.2d 1578 (May 29, 2002). A copy of Judge Motley's order is annexed as **Exhibit D**. A copy of the final non-appealable judgment entered on April 24, 2002 (the "Judgment") is annexed as **Exhibit E**.

19. Following entry of the Judgment, the Mark was registered by the USPTO in 2005. *See* Ex. A.

**B. The Mark Is Transferred from CHUM And Ceases To Be Used In The United States**

20. CHUM was acquired by CTVglobemedia, Inc. ("CTV") in 2007.

21. CTV immediately began unwinding international licenses and syndication agreements relating to the Mark entered into by CHUM.

22. CTV was acquired by BCE, Inc. in 2011 which in turn established Bell as its mass-media subsidiary to, among other things, hold the Mark.

23. From 2011 through the present, Bell did not oppose cancellation proceedings concerning the Mark in jurisdictions where it was not being used.

24. From 2002 through April 11, 2012, none of CHUM, CTV, Bell, Bigfoot or any other person or entity has used the Mark in the United States outside of the half-hour television show “FT Fashion Television.”

25. On April 11, 2012, production on the last episode of the FT Fashion Television show ended.

26. From April 11, 2012 until the present, the Mark has not been used in the United States.

**C. Bigfoot Entertainment, Inc. Incorporates Fashion Television International, Ltd. As An Undercapitalized Alter-Ego To Wage A World-Wide Campaign Against FTV Based Upon The Mark Acquired From Bell Via A License And Later Assignment**

27. Defendant Bigfoot Entertainment, Inc. is a holding of Bigfoot Ventures which is controlled and operated by Gleissner who manages his holdings through “New York-based investment operations.” A copy of Mr. Gleissner’s profile page from the Bigfoot Ventures website is annexed as **Exhibit F**.

28. Defendant Bigfoot Entertainment, Inc. entered into the License in October of 2014 with Bell concerning, as relevant here, the Mark. (At the time the License was entered into, Bigfoot was a California entity). The License included the right to enforce Bell’s interest in the Mark in the United States including the prosecution of accrued infringement claims.

29. The License provided that Bigfoot would create a separate entity in order to commence enforcement proceedings. Specifically, the License provides Bigfoot with the “rights to the brand, logo, likeness, and trademarks. . .of the channel ‘Fashion Television’ for worldwide use with the exception of Canada, on an as-is basis.” In furtherance of the License, Bell executed a

power-of-attorney in favor of the New York law firm designated by Bigfoot, Fross Zelnick Lehrman & Zissu, P.C. (“FZLZ”). A copy of the License is annexed as **Exhibit G**.

30. In October of 2014, Defendant Bigfoot Entertainment, Inc. established an undercapitalized entity known as FTIL in the United Kingdom for the sole purpose of enforcing the License. Bigfoot Entertainment, Inc. owns the single authorized share of FTIL which is valued at one British Pound (£ 1). Bigfoot established, owns, operates and does business as FTIL from its New York office. As alleged above and more fully explained below, FTIL is a mere “alter-ego” of Bigfoot. A copy of FTIL’s incorporation papers is annexed as **Exhibit H**.

31. Upon information and belief, FTIL was established for the purpose of waging a world-wide attack against FTV. By establishing FTIL, Bigfoot attempted to hide from FTV the fact that it is the true party in interest in exploiting the Mark. Bigfoot similarly established FTIL as a judgment-proof shell company because it had actual knowledge that certain of the assets it received under the terms of the License were likely to be invalid and that the proceedings it commenced in FTIL’s name would likely result in counter-actions or other adverse consequences resulting in costs, fees and judgments against FTIL.

32. In December of 2014, FZLZ sent cease-and-desist letters to FTV and its distributors, purportedly on behalf of FTIL. The cease-and-desist letters were sent under the alleged authority of “a license emanating from Bell Media Inc.” in favor of FTIL claiming that FTV’s broadcasts infringe on the rights in the marks FASHION TELEVISION and FT FASHION TELEVISION. The cease-and-desist letters sought to terminate FTV’s broadcasts in the United States and sought information from the distributors relating to any monies paid to FTV. As a result of the cease-and-desist letters, FTV’s distributors sought indemnification. A copy of a cease-and-desist letter and subsequent indemnification request from Atlantic Broadband are annexed as **Exhibit I**.

33. Upon investigation, FTV learned that, in reality, Bigfoot had in fact retained FZLZ and authorized the cease-and-desist letters. Specifically, the cease-and-desist letters referenced FZLZ client code “BIGF.” Thereafter, during the course of discovery authorized by the Court, FZLZ produced its retainer letter and initial invoice which were sent to Bigfoot’s legal counsel, Gabriel Miller, Esq., at Bigfoot’s New York office. FZLZ subsequently informed FTV in writing that the directives concerning the cease-and-desist letters were received from Mr. Miller. A copy of the retainer letter between FZLZ and Bigfoot is annexed as **Exhibit J**; a copy of the related invoice from FZLZ to Bigfoot is annexed as **Exhibit K**; a copy of FZLZ’s email indicating that directives were provided by Bigfoot is annexed as **Exhibit L**.

34. In addition to the cease-and-desist letters, FTIL commenced a proceeding against FTV in the World Intellectual Property Organization Arbitration and Mediation Center (“WIPO”) seeking to preclude FTV’s use of its website, fashiontv.com, which has been active since 1996. The complaint filed with WIPO is premised on the License. A copy of the WIPO complaint is annexed as **Exhibit M**.

35. Following the commencement of this action, Bigfoot and Bell entered into the Assignment whereby which Bigfoot took ownership of those assets referenced in the License, including the Mark and any associated infringement claims. Upon information and belief, the License was executed in 2015 although it is pre-dated “as of 24 December 2014.” A copy of the Assignment is annexed as **Exhibit N**.

36. Upon information and belief, Bigfoot has not formally licensed or assigned the Mark to FTIL.

**D. Declaratory Relief Is Warranted As Against Bigfoot, The True Party In Interest And Owner Of The Mark, Because FTV Has Experienced An Attack Against Its Website And Reasonably Expects Further Attacks By Bigfoot's Alter-Ego, FTIL, In The United States Such That An Actual Controversy Exists**

37. Declaratory relief is warranted due to Defendant Bigfoot Entertainment's creation of an actual controversy against FTV based upon its claims, asserted through its alter-ego FTIL, against FTV's website and the sending of the certain cease-and-desist from New York in December of 2014 to FTV and its distributors. Based upon the foregoing, FTV has a reasonable apprehension of being subjected to further and continuing attacks in the United States by Bigfoot as the owner of the Mark. FTV has a valuable interest in enforcing the Judgment entered in this Court which determined that FTV's broadcasts did not infringe upon the Mark such that the Court should declare the rights of FTV as against Bigfoot.

38. Bigfoot is named as the only defendant herein because complete relief can be afforded as required by Fed. R. Civ. P. 19. The assertions made in and the evidence annexed to this complaint indicated that: (i) Bigfoot and FTIL disregard corporate formalities e.g. Bigfoot provided the directives to FZLZ; (ii) FTIL is undercapitalized e.g. its lone authorized share is valued at £1; (iii) there is an overlap in ownership e.g. Gleissner controls both entities; (iv) Bigfoot and FTIL share office space and employees e.g. Mr. Miller received correspondence from FZLZ and authorized the cease-and-desist letters from Bigfoot's New York office; (v) FTIL does not exercise discretion e.g. the License makes clear that Bigfoot established the entity for the specific purpose of enforcing the License; (vi) the dealings between Bigfoot and FTIL are not at arms length because FTIL is entirely owned by Bigfoot; (vii) FTIL is not an independent profit center and was formed only as an enforcement mechanism for Bigfoot; (viii) Bigfoot and FTIL intermingle property, specifically the

assets acquired through the License and Assignment. Upon information and belief, FTIL does not own any assets.

39. The Judgment was not appealed and the Court may apply the doctrines of res judicata and collateral estoppel because the exact or nearly exact issues raised in the cease-and-desist letters were fully and fairly litigated by Bigfoot's predecessor. Even in the absence of the judgment, FTV's broadcasts would not violate Bigfoot's rights in the generic Mark in issue. Accordingly, a declaration of non-infringement is warranted.

40. The Mark has not been used in the United States for more than three years which constitutes *prima facie* evidence of abandonment under the Lanham Act. Bigfoot's predecessors failed to maintain the mark or defend cancellation proceedings brought around the world. Bigfoot's direct predecessor failed to retain any control of the mark when it licensed the mark. Accordingly, a declaration of abandonment is warranted. 15 U.S.C. §§ 115(b), 1127.

V.

CAUSES OF ACTION

**CLAIM FOR DECLARATORY JUDGMENT OF  
NON-INFRINGEMENT UNDER THE LANHAM ACT**

41. Plaintiffs repeat and re-allege paragraphs 1-40 of this Complaint as if fully set forth herein.

42. In a case of actual controversy within its jurisdiction, the Court is vested with the discretion to declare the rights and other legal relations of any interested party. 28 U.S.C. § 2201.

43. A declaratory judgment is properly issued (i) when the judgment will serve a useful purpose in clarifying and settling the legal relations in issue, or (ii) when it will terminate and afford relief from the uncertainty, insecurity, and controversy giving rise to the proceeding.

44. A case of actual controversy exists because in December of 2014, Bigfoot caused the cease-and-desist letters to be sent by FZLZ to FTV and its distributors seeking the termination of FTV's broadcasts in the United States based upon its purported rights in the Mark acquired from Bell. Bigfoot claimed that FTV's use of its marks were confusingly similar to the Mark even though FTV's broadcasts were held to be non-infringing by the 2002 Judgment. Bigfoot similarly caused FTIL to file the WIPO complaint against FTV's website.

45. Bigfoot has represented that it will seek to utilize the Mark, previously used in connection with a half-hour television program in the United States, to operate a 24/7 television network and preempt all competitors from broadcasting any content bearing on fashion.

46. A declaratory judgment would serve a useful purpose in clarifying and settling the issues between the parties and provide FTV and its distributors relief from the existing controversy.

47. FTV has continuously broadcast its programming in the United States since 1998.

48. This Court has previously held the mark FASHION TELEVISION to be generic in connection with the final non-appealable Judgment.

49. FTV has a valuable property interest in the Judgment.

50. Based on the foregoing, Plaintiff seeks a declaration that its broadcasts via uplink in the United States do not violate the Lanham Act or any right of Bigfoot under the terms of the License or Assignment along with the costs and attorneys fees of this action.

51. The declaration should be entered as against Bigfoot and any entity acting in concert with Bigfoot as well as its successors and assignees.

**CLAIM FOR DECLARATORY JUDGMENT OF  
GENERICNESS OR ABANDONMENT OF THE MARK UNDER THE LANHAM ACT**

52. Plaintiffs repeat and re-allege paragraphs 1-51 of this Complaint as if fully set forth

herein.

53. In a case of actual controversy within its jurisdiction, the Court is vested with the discretion to declare the rights and other legal relations of any interested party. 28 U.S.C. § 2201.

54. A trademark that has become generic may be cancelled as generic at any time. 15 U.S.C. §§ 1052(e), 1064(c).

55. An incontestable trademark may be abandoned. 15 U.S.C. §§ 1115(b), 1127.

56. A declaratory judgment is properly issued (i) when the judgment will serve a useful purpose in clarifying and settling the legal relations in issue, or (ii) when it will terminate and afford relief from the uncertainty, insecurity, and controversy giving rise to the proceeding.

57. A case of actual controversy exists because in December of 2014, Bigfoot caused the cease-and-desist letters to be sent by FZLZ to FTV and its distributors seeking the termination of FTV's broadcasts in the United States based upon its purported rights in the Mark acquired from Bell. Bigfoot claimed that FTV's marks were confusingly similar to the Mark even though FTV's broadcasts were held to be non-infringing by the 2002 Judgment. Bigfoot similarly caused FTIL to file the WIPO complaint against FTV's website.

58. Bigfoot has represented that it will seek to utilize the Mark, previously used in connection with a half-hour television program in the United States, to operate a 24/7 television network and preempt all competitors from broadcasting any content bearing on fashion.

59. A declaratory judgment would serve a useful purpose in clarifying and settling the issues between the parties and provide FTV and its distributors relief from the existing controversy.

60. The term FASHION TELEVISION was declared to be generic in the final Judgment.

61. FTV has a valuable property interest in the Judgment.

62. Chum was acquired by CTVglobemedia Inc. (CTV) in 2007. (ECF Doc. 30 ¶ 14).

63. CTV thereafter made a strategic decision to focus its efforts on Canada and unwind international licensing and syndication rights. (ECF Doc. 30 ¶ 15).

64. In April of 2011, CTV was purchased by BCE which formed Bell as its mass-media subsidiary to, among other things, hold the Mark. (ECF Doc. 30 ¶ 6-7).

65. It was the policy of Bell to not challenge cancellation proceedings brought in other jurisdictions concerning the Mark if the Mark was no longer being used. (ECF Doc. 30 ¶ 21).

66. At the time it ceased use of the Mark, Bell had no intention of re-commercializing the Mark.

67. The Mark has not been used in the United States for more than three years. (ECF Doc. 30 ¶ 11).

68. The License did not provide Bell with the authority to exert quality control over the mark and is therefore a “naked” license, which is the functional equivalent of abandonment.

69. Continued registration of the Mark would cause additional to harm to FTV because it will remain subject to continued attacks from Bigfoot. Further, the Mark, previously used as a logo in connection with a half-hour television program, will cause confusion in the marketplace if permitted to be used in connection with a 24/7 channel thus causing additional harm to FTV.

70. Accordingly, the Court should issue a judgment declaring that the Mark is generic or has been abandoned and cancelling said Mark.

## VI.

### **PRAYER FOR RELIEF**

**WHEREFORE**, FTV respectfully demands the following relief:

1. A judgment declaring that Plaintiffs’ commercial activities do not violate any right of Bigfoot or Bigfoot’s sub-licensees.

2. A judgment declaring that the Mark is generic or has been abandoned.
3. The costs and fees incurred in this matter including reasonable attorneys' fees.
4. Any such other and further relief as the Court deems just, proper and equitable.

Dated: May 28, 2015  
New York, New York

Respectfully submitted,

**DUNNINGTON, BARTHOLOW &  
MILLER LLP**

By: s/ Raymond Dowd

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**Int. Cls.: 38 and 41**

**Prior U.S. Cls.: 100, 101, 104 and 107**

**United States Patent and Trademark Office**

**Reg. No. 2,945,407**

Registered May 3, 2005

**SERVICE MARK  
PRINCIPAL REGISTER**



**FASHION  
TELEVISION**

CHUM LIMITED (CANADA CORPORATION)  
1331 YONGE STREET  
TORONTO, ONTARIO, M4T 1Y1, CANADA

FOR: BROADCASTING PROGRAMS VIA A GLOBAL COMPUTER NETWORK, IN CLASS 38 (U.S. CLS. 100, 101 AND 104).

FIRST USE 0-0-1992; IN COMMERCE 0-0-1992.

FOR: PRODUCTION AND DISTRIBUTION OF TELEVISION PROGRAMS; AND ENTERTAINMENT SERVICES IN THE NATURE OF AN ONGOING SERIES OF TELEVISION PROGRAMS CONCERNING COMMENTARY, NEWS, HISTORY AND PERSONALITIES IN THE FIELDS OF FASHION, DESIGN TRENDS, PHOTOGRAPHY, ART, ARCHITECTURE, MUSIC, POP CULTURE, AND DANCE, IN CLASS 41 (U.S. CLS. 100, 101 AND 107).

FIRST USE 0-0-1992; IN COMMERCE 0-0-1992.

PRIORITY CLAIMED UNDER SEC. 44(D) ON CANADA APPLICATION NO. 810,139, FILED 4-17-1996.

OWNER OF U.S. REG. NO. 1,526,138.

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "TELEVISION", APART FROM THE MARK AS SHOWN.

SEC. 2(F).

SER. NO. 75-101,259, FILED 5-9-1996.

JOHN E. MICHOS, EXAMINING ATTORNEY

SN 75/101259

OFFICE COPY

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Attorneys for Plaintiff

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

CHUM LIMITED,  
a Canadian corporation,

Plaintiff,

v.

ADAM LISOWSKI,  
an individual a.k.a Michel Adam  
and a.k.a Michel Adam Lisowski and  
d/b/a Fashion TV,  
OPERA HOLDING LTD.,  
a French corporation d/b/a  
Fashion TV and d/b/a F.TV,  
FASHION TV PARIS, S.A.R.L.,  
a French limited liability company  
d/b/a F.TV Et F.L'Original Et F.International,  
FASHION TV NY, INC.,  
a New York corporation, and  
FASHION TV, LTD.,  
a British Virgin Islands corporation,

Defendants.

Exhibits to  
Motion to Suspend  
pending CIA filed  
12/16/99  
paper # 12

98CV-5060 (KMW)

75/101259

FIRST AMENDED COMPLAINT

RECEIVED 10/10/10 00  
FBI - NEW YORK  
OCT 10 2010

Plaintiff, Chum Limited, for its complaint against Defendants Opera Holding Ltd., d/b/a Fashion TV and d/b/a/ F.TV, Fashion TV Paris, s.a.r.l., d/b/a F.TV et F.L'Original et F.International, Fashion TV NY Inc., a New York corporation, F.TV, Ltd., a British Virgin Islands corporation, and Adam Lisowski (a.k.a. Michel Adam, a.k.a. Michel Adam Lisowski, and d/b/a Fashion TV) alleges upon personal knowledge for its own acts and upon information and belief with respect to all other matters, as follows:

#### **JURISDICTION AND VENUE**

1. This is an action for trademark infringement, unfair competition, trademark dilution, and unfair business practices seeking preliminary and permanent injunctive relief and damages against Defendants for their willful and blatant infringement of plaintiff's FASHION TELEVISION, FASHION TV, FT FASHION TELEVISION and FT trademarks in violation of the Federal Trademark Act, 15 U.S.C. § 1051 et seq., New York General Business Law § 349 et seq., New York General Business Law § 360-1 and common law.

2. Jurisdiction is founded on 28 U.S.C. §§ 1331, 1132, 1338 and/or 1367, as well as 15 U.S.C. § 1121. The amount in controversy for each claim exceeds \$75,000. This Court has personal jurisdiction over each of the Defendants because each conducts systematic and continuous business in this State. This Court also has personal jurisdiction over each of the Defendants because the claims against

them arise out of their tortious acts that occurred in this State. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b) because a substantial part of the events giving rise to this action occurred in this District, and because all of the Defendants are subject to personal jurisdiction in this District.

**PLAINTIFF CHUM AND ITS FASHION TELEVISION MARKS**

3. Plaintiff, Chum Limited (hereinafter "Chum"), is a Canadian corporation incorporated in the Province of Ontario and has a principal place of business at 1331 Yonge Street, Toronto, Ontario M4T 1Y1, Canada.

4. Chum is involved in a number of broadcasting services, including television and radio news and entertainment services.

5. Since at least as early as 1985, Chum has been using the trademarks FASHION TELEVISION, FASHION TV, FT FASHION TELEVISION and FT (the "FASHION TELEVISION Marks") on and in conjunction with a television program featuring a variety of segments concerning contemporary and historical personalities and events in the field of entertainment, art, and culture, specifically the fields of fashion, art, design, architecture, dance, music, and photography.

6. Chum's FASHION TELEVISION program is syndicated to more than 100 countries worldwide, reaching over 150 million households. In the United States, the FASHION TELEVISION program has been carried by VH-1 cable

channel since as early as February 1, 1992, and currently reaches over 50 million households.

7. Chum is the owner of a trademark application for the mark FT FASHION TELEVISION and Design, U.S. Serial No. 75-101259, for broadcasting television programs about fashion and for producing and distributing a series of television programs concerning fashion.

8. Chum's FASHION TELEVISION trademarks are promoted through extensive advertising and promotion. Chum's FASHION TELEVISION program and trademarks have been the subject of extensive media coverage, including, for example, in ongoing promotional spots on VH-1 and numerous articles in renowned periodicals such as Time, Vogue, TV Guide, Vanity Fair, Seventeen, Glamour, Bazaar, Variety, Mirabella, and Women's Wear Daily.

9. Chum has extensively used the FASHION TELEVISION Marks in several distinctive design formats, including the use of the term FASHION in bold above the term TELEVISION in a distinctive font and the use of the slogan FT.

10. Chum's FASHION TELEVISION trademarks are strong marks, have acquired secondary meaning and fame, and are valuable business assets of Chum.

**DEFENDANTS AND THEIR INFRINGING ACTIVITIES**

11. Defendant, Adam Lisowski ("Lisowski"), a.k.a. Michel Adam, a.k.a. Michel Adam Lisowski, d/b/a Fashion TV, is an Austrian citizen having a principal place of business at 22 Avenue Foch, Paris 75016, France, and a business office at 155 Spring Street, New York, New York 10012.

12. Defendant, Opera Holding Ltd., d/b/a Fashion TV and d/b/a F TV, is a French corporation having a principal place of business at 22 Avenue Foch, 75016 Paris, France, and a business office at 155 Spring Street, New York, New York 10012.

13. Lisowski is a principal of Opera Holding Ltd.

14. Defendant, Fashion TV NY, Inc., is a New York corporation having a principal place of business at 155 Spring Street, Third Floor, New York, New York 10012.

15. Exhibit 1 is a copy of a business card from one or more of the Defendants' or Defendants' agents' office at 155 Spring Street, New York, New York 10012.

16. Defendant, Fashion TV Paris, s.a.r.l., is a French limited liability company d/b/a F.TV et F.L'Original et F.International with a principal office at 50, Rue de la Chaussee D Antin, 75009 Paris, France.

17. Lisowski is the creator of, and a partner or owner of, Fashion TV Paris, s.a.r.l.

18. Defendant, F.TV, Ltd. is a British Virgin Island corporation.

19. Lisowski is a Managing Director of Defendant, F.TV, Ltd.

20. Lisowski is a moving, active, conscious force behind some or all of his co-Defendants' actions and infringements alleged herein. He participated in or authorized, approved, caused, or induced his co-Defendants to perform the acts they are alleged to have performed herein.

21. Upon information and belief, Lisowski is the "alter ego" of some or all of his co-Defendants herein (see Exhibit 2), because Lisowski does not maintain the requisite corporate formalities with respect to use of the Infringing Marks in the United States.

22. Each of the Defendants herein is in the business of broadcasting television programs about fashion via direct broadcast satellite and other means.

23. Since at least as early as May 1998, Defendants have been using and are continuing to use in the United States, including without limitation in Manhattan, New York, the marks F.TV, F.TV THE ORIGINAL, FASHION.TV, FASHION TV THE ORIGINAL, FASHION TELEVISION, and FASHION TV PARIS (the "Infringing Marks") in connection with Defendants' businesses and with

the advertising, promotion, and/or sale of goods and services identical and similar to those of Chum, without the consent of Chum.

24. The Infringing Marks are confusingly similar to Chum's FASHION TELEVISION Marks, have caused, and are likely to continue to cause confusion, mistake, or deception as to source, origin, affiliation or sponsorship among purchasers and/or users of such goods/services.

25. In addition, Defendants are using the Infringing Marks in design formats and a font style that directly mimic the distinctive design formats and style of Chum's FASHION TELEVISION Marks, including the Defendants' use of the mark FASHION TV PARIS, which replicates Chum's presentation of its FASHION TELEVISION mark. Such uses of the Infringing Marks have caused and are likely to continue to cause confusion, mistake, or deception as to source or origin among purchasers and/or users of such goods and services.

26. Each of the Defendants had actual knowledge of Chum's prior rights in its marks prior to initiating use of the Infringing Marks in this District.

27. In July 1997, Chum expressly notified Lisowski of Chum's superior rights in its marks, and requested that Lisowski cease use of the Infringing Marks. Lisowski refused to comply with Chum's request, and has instead expanded his and his co-Defendants' use of the Infringing Marks.

28. Defendants have aired and continue to air their infringing Fashion TV program on and through, among other means, Time Warner Cable's Channel 35 in Manhattan.

29. Exhibit 3 contains an excerpt from Defendants' Internet Web site that indicates that on May 18, 1998, "FTV is launched in USA, Time Warner cable in New York (channel 35)...."

30. Exhibit 4 contains an excerpt from Defendants' Internet Web site, which states the following: "Fashion TV has signed a 1 year contract with Time Warner Cable. The latest fashion shows of Paris can be experienced on channel 35 every Monday from 7.30 PM to 8.30 PM and from 10.00 PM to 10.30 PM, Tuesday from 8.00 PM to 8.30 PM and Friday from 8.30 PM to 9.30 PM. . . . For more information, contact F.TV on the web site [www.FTV.fr](http://www.FTV.fr) or call 212 343 0700."

31. Exhibit 5 contains 3 sequential still photographs of videotaped excerpts from Defendants' infringing Fashion TV programming recorded from Time Warner Cable's Channel 35 broadcast in Manhattan.

32. Defendants have contracted with the international Fashion Café restaurant chain to air Defendants' Fashion TV programming in Fashion Café restaurants around the world, including in Manhattan. Exhibit 6 contains an excerpt from Defendant's Internet Web site announcing this deal.

33. Defendants' Internet Web site promoting Defendants' infringing activities, including Defendants' infringing activities in this District, is directed to and accessible from this District.

**IRREPARABLE HARM**

34. As a result of Defendants' infringing activities, Chum has been and will continue to be irreparably injured in that actual and potential purchasers of the Defendants' products or services will be misled and confused regarding the source, origin, affiliation, or sponsorship of Defendants' products, services, and business activities, and will mistakenly believe that Defendants and Defendants' products, services, and business activities are provided by, authorized by, sponsored by, affiliated with, or otherwise related to, Chum.

35. Defendants have infringed Chum's FASHION TELEVISION Marks with the intent to capitalize on the widespread and favorable reputation of the FASHION TELEVISION Marks, and with the intent to confuse and deceive prospective purchasers and other viewers of Defendants' television programming into believing that some affiliation or relationship exists between the Defendants and Chum.

36. Defendants' continued uses of the Infringing Marks in connection with the promotion, advertising, and performing of television programming

services will, if not enjoined, materially and negatively affect Chum's business, reputation, and goodwill.

**(First Count)**

**(TRADEMARK INFRINGEMENT)**

37. Plaintiff repeats and realleges the preceding paragraphs as if fully set forth herein.

38. This claim arises under the Federal Trademark Act, 15 U.S.C. § 1051 et seq.

39. Defendants' acts constitute a false designation of origin, misrepresentation, and other violations of 15 U.S.C. § 1125(a).

40. Defendants' wrongful acts were performed in willful, deliberate, and/or intentional disregard of Chum's rights. This case is exceptional under the Federal Trademark Act, 15 U.S.C. § 1051 et seq.

41. Chum and the general public have been or will be damaged by the Defendants' actions. If the Defendants' acts are allowed to continue, Plaintiff will continue to suffer irreparable injury for which it has no adequate remedy at law.

**(Second Count)**

**(FEDERAL TRADEMARK DILUTION)**

42. Chum repeats and realleges the preceding paragraphs as if fully set forth herein.

43. This claim arises under the Federal Trademark Act, 15 U.S.C. § 1051 et seq.

44. Chum's marks are famous within the meaning of 15 U.S.C. § 1125(c). Chum's marks became famous prior to each of the Defendants' first use in commerce of a mark identical or similar to Chum's marks.

45. Each Defendant's use of a mark identical or similar to Chum's marks diminishes and dilutes the distinctive quality of Chum's marks, and erodes and diminishes the goodwill that Chum has long enjoyed under its marks.

46. Defendants' acts constitute violations of 15 U.S.C. § 1125(c)(1).

47. Defendants' wrongful acts were taken in willful, deliberate, and/or intentional disregard of Plaintiff's rights. This case is exceptional under the Federal Trademark Act, 15 U.S.C. § 1051 et seq.

48. Chum has been and will be irreparably damaged by the Defendants' acts. If the Defendants' acts are allowed to continue, Chum will continue to suffer irreparable injury for which it has no adequate remedy at law.

**(Third Count)**

**(UNFAIR BUSINESS PRACTICES)**

49. Chum repeats and realleges the preceding paragraphs as if fully set forth herein.

50. This cause of action arises under New York General Business Law § 349 et seq.

51. Defendants' acts constitute deceptive acts or practices in the conduct of its business in violation of New York General Business Law § 349 et seq.

52. Chum and the general public have been and will be damaged by the Defendants' acts. If the Defendants' acts are allowed to continue, Chum and the general public will continue to suffer irreparable injury for which there is no adequate remedy at law.

**(Fourth Count)**

**(DILUTION UNDER STATE LAW)**

53. Chum repeats and realleges the preceding paragraphs as if fully set forth herein.

54. This cause of action arises under New York General Business Law § 360-1.

55. Defendants' acts constitute willful trademark dilution in violation of state law including New York General Business Law § 360-1.

56. Chum has been damaged by each Defendant's acts. If the Defendants' acts are allowed to continue, Chum will continue to suffer irreparable injury for which it has no adequate remedy at law.

**(Fifth Count)**

**(COMMON LAW TRADEMARK  
INFRINGEMENT AND UNFAIR COMPETITION)**

57. Plaintiff repeats and realleges the preceding paragraphs as if fully set forth herein.

58. This cause of action arises under the common law.

59. Defendants' acts constitute trademark infringement and unfair competition.

60. Chum has been damaged by the Defendants' acts. If the Defendants' acts are allowed to continue, Chum will continue to suffer irreparable injury for which it has no adequate remedy at law.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff, Chum Limited, prays that the Court enter an order:

A. Preliminarily and permanently enjoining and restraining all Defendants, their agents, servants, and employees, and all persons in active concert or

participation with, through, or under the Defendants, at first during the pendency of this action and thereafter perpetually:

1. From committing any acts of unfair competition and from implying a false designation of origin or a false description or representation with respect to the FASHION TELEVISION Marks;
2. From committing any acts of unfair competition by passing off or inducing or enabling others to sell or pass off goods and services which are not Plaintiff's goods and services as those of Plaintiff;
3. From using in any manner, packaging, labels, signs, literature, display cards, or other packaging, advertising, or promotional materials, or other materials related to Defendants' goods and services, bearing the marks F.TV, F.TV THE ORIGINAL, FASHION.TV, FASHION TV THE ORIGINAL, FASHION TELEVISION, FASHION TV PARIS or any other marks, word, name, design or logo confusingly similar to the FASHION TELEVISION Marks or causing dilution thereof;

4. From making any statements on promotional materials or advertising for Defendants' goods and services which are false or misleading as to source or origin; and
5. From committing any acts of unfair or deceptive trade practices calculated to cause members of the trade or purchasing public to believe that Defendants' goods and services are the goods and services of Plaintiff or sponsored by or associated with, or related to, or connected with, or in some way endorsed or promoted by Plaintiff under the supervision or control of Plaintiff.

B. Requiring that all Defendants deliver up to Plaintiff any and all containers, signs, packaging materials, printing plates, and advertising or promotional materials and any materials used in the preparation thereof, which in any way unlawfully use or make reference to the FASHION TELEVISION Marks in connection with Defendants' goods and services.

C. Requiring that all Defendants, within thirty (30) days after service of notice in entry of judgment or issuance of an injunction pursuant thereto, file with the Court and serve upon Plaintiff's counsel a written report under oath setting forth details of the manner in which all Defendants have complied with the Court's order pursuant to paragraphs A and B above.

Not Reported in F.Supp.2d, 2001 WL 243541 (S.D.N.Y.), 2001-1 Trade Cases P 73,275  
(Cite as: **2001 WL 243541 (S.D.N.Y.)**)

**H**

United States District Court, S.D. New York.

**CHUM LIMITED**, a Canadian Corporation, Plaintiff,  
v.

Adam **LISOWSKI**, an Individual a/k/a Michel Adam and a/k/a Michel Adam **Lisowski** and d/b/a Fashion TV, Opera Holding Ltd., a French Corporation d/b/a Fashion TV and d/b/a F.TV, Fashion TV Paris, S.A.R.L., a French Limited Liability Company d/b/a F.TV Et F.L'Original Et F.International, Fashion TV NY, Inc., a New York Corporation, and Fashion TV, Ltd., a British Virgin Islands Corporation Defendants.

No. 98 CIV. 5060(KMW).

March 12, 2001.

#### ORDER

**WOOD**, D.J.

\*1 This suit arises out of a dispute over the rights to the name “fashion television.” Plaintiff, a Canadian entertainment company, sues for trademark infringement and dilution under the Lanham Act, trademark infringement and unfair competition under common law, and unfair business practices and trademark dilution under New York state law. Defendants, producers of a television channel focusing on fashion, have counterclaimed under the Sherman Act and the Lanham Act. Before the Court at this time are plaintiff's motions to dismiss and for summary judgment on defendants' counterclaims; <sup>FN1</sup> defendants' motion for summary judgment dismissing plaintiff's “trademark dilution and infringement claims” (Defendants' Memorandum of Support of Motion for Summary Judgment, dated February 28, 2000 [“Defts.' Mem.”] p. 1.); <sup>FN2</sup> defendants' motion for reconsideration of this Court's decision denying defendants leave to amend their Answer and Counterclaims; and the parties' motions for sanctions under

Federal Rule of Civil Procedure [“Fed.R.Civ.P.”] 11 [“Rule 11”]. For the reasons outlined below, the Court denies in part and grants in part defendants' request for reconsideration of this Court's Order denying leave to amend its answer and counterclaims, grants summary judgment on defendants' counterclaims, grants summary judgment on plaintiff's trademark infringement and trademark dilution claims, denies summary judgment on plaintiff's unfair competition claim, and denies the parties' motions for sanctions.

**FN1.** Plaintiff has reserved its right to seek a default judgment against Fashion TV NY, which it served on the New York Secretary of State, and which has not responded in this matter.

**FN2.** Defendants ignore, for purposes of this motion, plaintiff's third cause of action, which seeks relief for unfair business practices under [New York General Business Law § 349](#); they neither mention this claim in their briefs nor cite any decisions that discuss this statute. As a result, defendants have not met their burden of showing they are entitled to judgment on this claim as a matter of law.

#### I. BACKGROUND

##### *A. Plaintiff and its Program*

Plaintiff produces, broadcasts, and distributes television and radio programming. (Plaintiff's Rule 56.1 Statement of Material Undisputed Facts, dated March 3, 2000 [“Pl.'s 56 Statement”] ¶ 1.) One of plaintiff's productions is its magazine-format fashion program [“Program”], which features a host, interviews with photographers, designers, and models, and edited clips of fashion footage. (Defts.' Mem. p. 5.) Plaintiff calls this program “Fashion Television” but also uses “FT FashionTelevision,” “Fashion TV,” and “FTV” [hereinafter the “FT Marks”] in conjunction

Not Reported in F.Supp.2d, 2001 WL 243541 (S.D.N.Y.), 2001-1 Trade Cases P 73,275

(Cite as: **2001 WL 243541 (S.D.N.Y.)**)

with this programming, as well as the slogan “The Original. The Best.” (Plaintiff’s Rule 56.1 Statement of Material Facts in Opposition, dated March 13, 2000 [“Pl.’s 56 Response”] ¶¶ 6–7, 9.)

Plaintiff adopted the FashionTelevision mark in 1985 (Pl.’s 56 Response ¶ 1) and that mark has been in use in the United States since 1992, when the Program first aired on VH–1. (Pl.’s 56 Statement ¶ 2.) The Program was featured on VH–1 from 1992 through 1999, and is currently shown on E! Entertainment Television (Pl.’s Response ¶¶ 4–5); the Program has received mention in several prominent publications, including TV Guide and Vogue and, according to plaintiff, was VH–1’s highest rated program during one of its seasons. (Plaintiff’s Reply Memorandum of Law, dated March 13, 2000 [“Pl.’s Reply”] p. 12.)

\*2 Plaintiff’s competitors include CNN’s *Style with Elsa Klensch*, MTV’s *House of Style*, E! Entertainment Television’s *Fashion Emergency* and *Fashion File* and E!’s new 24–hour channel “style.” (Plaintiff’s Memorandum of Law in Support of Plaintiff’s Motion to Dismiss, dated February 14, 2000 [“Pl.’s Mem.”] pp. 12–13.) Plaintiff’s Program accounts for less than twenty-five percent of viewers watching these programs. (Pl.’s 56 Statement ¶ 6.)

#### *B. Defendants and their Channel*

Defendants produce a 24–hour television channel [“Defendants’ Channel” or “Channel”] featuring non-stop music and “clips of fashion models on a catwalk.” (Defts.’ Mem. p. 29.) Defendants broadcast their Channel in many countries; in the United States, it is broadcast in Miami and has been available on a trial basis in New York. (Defts.’ Mem. p. 6.)

Defendants’ Channel is named “f l’original,” but defendants at times refer to their products in marketing and other publications as “f l’original Fashion TV,” “FTV,” “FTV The Original,” “Fashion TV The Original,” “Fashion TV” and “Fashion TV Paris.”

(Pl.’s Mem. ¶¶ 12–12; Defts.’ Mem. p. 7.) Defendants refer to their production company as “Fashion TV Paris.” (Id.) Defendant **Lisowski** owns three French trademarks, registered in April, 1998, that are variations on “Fashion Television.” (Defts.’ Mem. p. 2; Declaration of Raymond Dowd, dated June 5, 2000 [“Dowd Decl.”] Exh. A.) It is undisputed that those of defendants’ marks that use the word “fashion” in conjunction with TV or television “look [ ] similar” to the FT Marks. (Deposition of Adam **Lisowski**, dated December 2, 1999 [“**Lisowski** Dep.”] p. 91.)

#### *C. The Parties’ Interactions*

The parties appear to have met at an industry meeting in Cannes in April, 1997. At that meeting, the parties discussed defendants’ new channel and the potential for plaintiff to sell defendants its “Ooh La La” program; plaintiff referred this sale to a junior employee, Tara Orme, for follow-up negotiations. (Defts.’ Mem. pp. 7–8.) Plaintiff understood the parties to have reached agreement, while defendants maintain that they merely expressed interest in the program. (Defts.Mem. p. 8.) During these negotiations, Ms. Orme referred to defendants as “Fashion TV” without objection on her part. (Defts.’ Mem. p. 8–9.)

In May 1997, defendant **Lisowski** allegedly sent an email to Moses Znaimer, a senior employee of plaintiff, which included the following:

The Channel we have created is called F. Sometimes we would like to use the words F.TV—Fashion Television, L’Original.

Though my legal counsel advises me that this is quite alright, as we use F.TV as a trademark, and Fashion Television as a descriptive work, I would like to make sure that we are not infringing on any of your intellectual properties. On the ohter [sic] hand, Fashion Television is more a descriptive matter, rather than an attempt to infringe on your

Not Reported in F.Supp.2d, 2001 WL 243541 (S.D.N.Y.), 2001-1 Trade Cases P 73,275  
(Cite as: 2001 WL 243541 (S.D.N.Y.))

rights.

\*3 (Defts.' Mem. p. 12 (uppercase type and other formatting removed).) It is unclear if plaintiff responded to this particular email, but it is undisputed that plaintiff objected to defendants' use of the mark in a June 2, 1997 email to **Lisowski**. (Defts.' Mem. p. 13.)

#### D. Procedural History

Plaintiff applied in March 1998 for registration of its Fashion Television mark with the U.S. Patent and Trademark Office ["PTO"] (Defts.' Exh. 15 (Application 75/101,259).) On June 21, 1999, the PTO, after considering plaintiff's application and supporting documentation, entered a final rejection of plaintiff's application. (Defts.' Exh. G.) The PTO examiner found, in part, that "fashion television" was not protectable and that plaintiff would have to disclaim exclusive rights to the use of these words in order for its mark (the specific "Fashion Television" logo) to be registered.

Plaintiff has also applied for a license to broadcast a 24-hour fashion channel in Canada under provisions of Canadian telecommunications law reserving certain channels for broadcasters meeting Canadian ownership requirements and minimum levels of "Canadian content" in their programming. This application currently is pending. (Dowd Decl. Exh. C.)

Plaintiff filed an action in France against defendants on February 27, 1998, asserting various causes of action under French law relating to defendant **Lisowski's** registration of the "Fashion Television" marks in France. The trial court in that action granted plaintiff a preliminary injunction, but this decision was reversed by the Paris Court of Appeals on May 19, 2000. See *S.A.R.L. Fashion TV v. Chum*, 2000/00951 (Paris Court of Appeals, May 19, 2000).

#### E. The Present Case

Plaintiff commenced this action on July 16, 1998 and filed an Amended Complaint on October 27, 1998. Defendants filed a motion to dismiss under [Fed.R.Civ.P. 12\(b\)\(1\)](#) and [12\(b\)\(6\)](#), which this Court denied on May 19, 1999. Defendants filed their Answer and Counterclaims on June 29, 1999 and an Amended Answer and Counterclaims on October 4, 1999; this Court, by Order dated October 26, 1999, declined to grant defendants leave to file their Amended Answer and Counterclaims, and deemed their initial Answer and Counterclaims operative in all respects. Plaintiff filed motions to dismiss or for summary judgment on defendants' counterclaims and for sanctions. Defendants filed motions for reconsideration of the Court's October 27, 1999 Order, for summary judgment dismissing plaintiff's claims, and for sanctions. By Order dated February 1, 2000, the Court directed the parties to submit consolidated briefing on these various motions.

## II. PRELIMINARY ISSUES

The Court first considers defendants' motion for reconsideration and the possible preclusive effect of the recent Paris Court of Appeals decision.

### A. Defendants' Motion for Reconsideration

Defendants move for reconsideration of the Court's Order denying defendants leave to amend their Answer and Counterclaims under [Fed.R.Civ.P. 11](#), [15](#), and [16](#). On reconsideration, the Court grants defendants leave, under [Rule 11](#), only to amend their original counterclaims as proposed in their Amended Answer and Counterclaims.

\*4 [Local Civil Rule 6.3](#) allows a party to seek reconsideration based on "matters or controlling decisions which counsel believes the court has overlooked." The court should reconsider its prior order where it "overlooked controlling decisions that may have influenced the earlier result" or failed to consider "factual matters that were put before the court on the underlying motion." *Travelers Ins. Co. v. Buffalo Reinsurance Co.*, 739 F.Supp. 209, 211

Not Reported in F.Supp.2d, 2001 WL 243541 (S.D.N.Y.), 2001-1 Trade Cases P 73,275  
(Cite as: 2001 WL 243541 (S.D.N.Y.))

(S.D.N.Y.1990) (citations omitted); see also *Shrader v. CSX Transp., Inc.*, 70 F.3d 255, 257 (2d Cir.1995). The standard on a motion for reconsideration is strict, however, “ ‘in order to dissuade repetitive arguments on issues that have already been considered fully by the court.’ ” *Travelers*, 739 F.Supp. at 211 (quoting *Caleb & Co. v. E.I. DuPont de Nemours & Co.*, 624 F.Supp. 747, 748 (S.D.N.Y.1985)); see also *Shrader*, 70 F.2d at 257.

The Court finds no reason to reconsider its earlier Order denying leave to amend under Rules 15 and 16 because defendants have failed to show good cause. The Second Circuit has recently reaffirmed that “despite the lenient standard of Rule 15(a), a district court does not abuse its discretion in denying leave to amend the pleadings after the deadline set in the scheduling order where the moving party has failed to establish good cause.” *Parker v. Columbia Pictures Industries*, 204 F.3d 326, 340 (2d Cir.2000). The Court found “no good cause for defendants’ delay in amending its answer and counterclaims” because defendants were on notice of the grounds for plaintiff’s motion to dismiss when they consented to the scheduling order precluding further claims and because defendants provided no explanation of why they could not have included the additional claims and parties at the outset. (see Order of October 26, 2000 p. 3.)

Defendants now argue that they “demonstrate ‘good cause’ ” because their request “was based on newly discovered evidence and made prior to discovery” and because the Court did not afford defendants “an opportunity to present evidence.” (Defts.’ Mem. pp. 1, 3.) These arguments are without merit. A finding of good cause “depends on the diligence of the moving party.” *Parker*, 204 F.3d at 340. Defendants still have shown no reason why they could not have included their counterclaims and additional parties at the time of their initial answer or during the time between the filing of their initial answer and the deadline for additional claims and parties. In addition, the Court considered two submissions from defendants prior to

issuing its Order (Letters from Jason E. Bogli to Honorable Kimba M. Wood dated October 16 and October 20, 1999); neither of these letters requested an opportunity to present evidence or suggested that the Court should not decide the issues before it on the basis of the parties’ submissions. For these reasons, the Court denies reconsideration of this portion of its ruling.

\*5 The Court finds, however, that defendants should be allowed to amend their pleadings under Rule 11. Rule 11(c)(1)(A) provides a party with an opportunity to “withdraw[ ] or appropriately correct[ ]” a “challenged” claim. Because plaintiff challenged defendants’ original counterclaims under Rule 11, defendants should have an opportunity to correct these challenged claims. Although plaintiff contends that defendants ignored earlier requests by plaintiff’s counsel to amend the challenged counterclaims (see Pl.’s Mem. p. 20), defendants did eventually respond to plaintiff’s Rule 11 concerns by “amending all counterclaims in the original Answer except for attempted monopolization” and changing the monopolization claim to attempted monopolization.” <sup>FN3</sup> (Defts.’ Mem. p. 3.) The Court now grants defendants leave to effect this limited correction of the challenged counterclaims and deems the initial Answer and Counterclaims superseded by the Amended Answer and Counterclaims to this extent. Defendants’ original Answer and Counterclaims are deemed operative, however, for all other purposes.

FN3. Although defendants appeared to be on notice of plaintiff’s Rule 11 challenges prior to September 10, 1999 (see Pl.’s Mem. p. 20), the parties’ submissions do not clarify when this earlier communication occurred. The Court therefore accepts defendants’ October 4, 1999 submission as timely under Rule 11(a)(1)(A).

#### B. The French Appellate Decision

Defendants also request that the Court give pre-

Not Reported in F.Supp.2d, 2001 WL 243541 (S.D.N.Y.), 2001-1 Trade Cases P 73,275  
(Cite as: 2001 WL 243541 (S.D.N.Y.))

clusive effect to the factual and legal findings of the Paris Court of Appeals, which rendered a decision in a parallel proceeding between the parties earlier this year. The French court determined that plaintiff had no cognizable claim for protection of its “Fashion Television” mark under French or Canadian law. *See S.A.R.L. Fashion TV v. Chum*, 2000/00951 (Paris Court of Appeals, May 19, 2000). For the reasons that follow, the Court finds the French decision not relevant to this case.

First, the Court declines to find res judicata, or claim preclusion, as to the French Court’s legal conclusions regarding plaintiff’s trademark rights. Whether “a litigant has been awarded or denied rights over a mark in a foreign country ordinarily does not determine its entitlement to the mark in the United States.” *Otokoyama Co. v. Wine of Japan Import, Inc.*, 175 F.3d 266, 273 (2d Cir.1999). Plaintiff’s lack of success in procuring foreign trademark protection is not relevant to the inquiry into its protectable rights, if any, in the FT marks under United States law. *See id.*; *see also Jordache Enterprises, Inc. v. Levi Strauss & Co.*, 841 F.Supp. 506 (S.D.N.Y.1993). Accordingly, the Court does not treat the Paris Court of Appeals’ legal conclusions as res judicata.

Second, the Court also declines to give collateral estoppel, or issue preclusion, effect to the French Court’s factual findings. Defendants claim that the French Court found that: (1) defendant **Lisowski** had no knowledge of plaintiff’s activities; (2) plaintiff has no rights in the FT Marks under French or Canadian law; (3) the market for television programs is distinct from the market for television channels and there is no likelihood of confusion between the two markets; and (4) plaintiff suffered no injury because its investments in a 24-hour channel came after the success of defendants’ channel. The Court concludes that it should not be bound by any of these “findings.”

\*6 It is well-settled that “[f]or collateral estoppel to apply, the issues in each action must be identical,

and issues are not identical when the legal standards governing their resolution are significantly different.” *Computer Assocs. Inter., Inc. v. Altai, Inc.*, 126 F.3d 365 (2d Cir.1997). This case focuses on the parties’ United States activities, as to which the French court made no findings. Moreover, the findings of the Paris Court of Appeals were predicated on French legal standards. Defendants maintain that the French court found that defendant **Lisowski** had “no knowledge of **Chum’s** activities.” A closer reading of the French decision, however, reveals that plaintiff did not prove that defendant **Lisowski** had sufficient familiarity with plaintiff’s Program to meet the elements of fraud under French law. Similarly, the French court made a finding on the likelihood of confusion under article L of the French Rules of Intellectual Property and a finding on plaintiff’s injury under several French causes of action. Defendants have provided no evidence that the legal standards governing fraud, trademark confusion, or injury in France are identical to any of the legal standards governing the myriad claims in this case. *See id.* (requiring moving party to show that legal standards are “identical”). Finally, the last factual issue—the protectability of the FT Marks in Canada and France—is not relevant to the issue of the protectability of the FT Marks under United States law, as discussed above. For these reasons, the Court denies defendants’ request that the factual and legal conclusions of the Paris Court of Appeals be considered binding in this case.

### III. SUMMARY JUDGMENT STANDARD

To prevail on a motion for summary judgment, the moving party must show that there are no genuine issues of material fact to be tried, and that it is entitled to judgment as a matter of law. *See Fed.R.Civ.P. 56(c); Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986); *Carlton v. Mystic Transp., Inc.*, 202 F.3d 129, 133 (2d Cir.2000). The party seeking summary judgment must identify materials in the record that “it believes demonstrate the absence of a genuine issue of material fact.” *Celotex Corp.*, 477 U.S. at 323. The non-moving party must then set forth specific facts

Not Reported in F.Supp.2d, 2001 WL 243541 (S.D.N.Y.), 2001-1 Trade Cases P 73,275  
(Cite as: 2001 WL 243541 (S.D.N.Y.))

that show that there is a genuine issue to be tried. See *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 251–52 (1986).

In considering the motion, the Court views the evidence in the light most favorable to the non-moving party and draws all reasonable inferences in its favor, see *Carlton*, 202 F.3d at 133. The non-moving party, however, “must do more than simply show that there is some metaphysical doubt as to the material facts.” *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986). Summary judgment is appropriate in trademark infringement cases where plaintiffs fail to produce evidence to support their claims. See, e.g., *Lois Sportswear, U.S.A., Inc. v. Levi Strauss & Co.*, 799 F.2d 867, 876 (2d Cir.1986). If, on the record presented, no rational fact-finder could find in the non-movant's favor, summary judgment is appropriate. See *Anderson*, 477 U.S. at 250; *Carlton*, 202 F.3d at 134.

#### IV. DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

\*7 Defendants seek summary judgment dismissing plaintiff's trademark infringement, dilution, and unfair competition claims.<sup>FN4</sup> For the reasons set forth below, the Court grants summary judgment on the trademark infringement and dilution claims, but denies summary judgment on the unfair competition claim.

**FN4.** Defendants also press an affirmative defense of laches, arguing that plaintiff failed to take timely action after learning of their infringing activities. If the delay in protesting a Lanham Act violation exceeds the analogous state statute of limitations period (here, the New York fraud period of six years), then a presumption of laches will arise; otherwise, the burden is on defendant to prove the defense. See *Conopco, Inc. v. Campbell Soup Co.*, 95 F.3d 187, 191–93 (2d Cir.1996). The length of the delay in this case is in dispute,

but it is a matter of weeks or months, not years. Defendants thus have the burden of showing laches, and the Court finds that they cannot do so.

To show laches, defendants must show that they have been prejudiced by a plaintiff's unreasonable delay in objecting to their infringing use. See *Conopco*, 95 F.3d at 192. Defendants argue that they committed to using the infringing marks in April of 1997 and that plaintiff did not object until June 2, 1997; defendants point out that a junior employee of plaintiff referred to defendants in correspondence as “Fashion TV” without objection, and that **Lisowski** wrote to plaintiff in May 1997 to inform plaintiff that defendants intended to use the infringing marks. Defendants maintain that the several week delay prior to objection, followed by the one year delay in filing the complaint, were unreasonable, and that in the interim, defendants reasonably committed resources to their “Fashion TV” mark.

The Court finds this argument to be without merit. The one month (at most) delay in response by plaintiff was not unreasonable under the circumstances, given that plaintiff would have needed time to receive the correspondence, discuss it with employees and legal counsel, and formulate a response. Defendants provide no evidence either that this four week delay was unreasonable, or that the delay of about one year between demanding cessation of defendants' use of the “Fashion TV” mark and filing this action was unreasonable. Defendants also offer no evidence of how, if at all, defendants were prejudiced. The Court therefore dismisses the laches defense as a matter of law.

Not Reported in F.Supp.2d, 2001 WL 243541 (S.D.N.Y.), 2001-1 Trade Cases P 73,275  
(Cite as: 2001 WL 243541 (S.D.N.Y.))

#### A. Trademark Infringement

Plaintiff alleges that defendants have infringed on its trademarks in violation of the Lanham Act, 15 U.S.C. § 1125(a). (citing *Kellogg Co. v. National Biscuit Co.*, 305 U.S. 111, 118 (1938)). Because plaintiff's marks are not registered in the United States, plaintiff bears the burden of demonstrating that it has a "valid trademark entitled to protection" in order to succeed on its trademark infringement claim. *Genesee Brewing Co., Inc. v. Stroh Brewing Co.*, 124 F.3d 137, 142 (2d Cir.1997); see also *Reese Publishing Co. v. Hampton Int'l Comm., Inc.*, 620 F.2d 7, 11 (2d Cir.1980); *Brandwynne v. Combe International, Ltd.*, 74 F.Supp.2d 364, 380 (S.D.N.Y.1999). The Court concludes below that plaintiff cannot meet this burden and that "fashion television" is not protected under trademark law.<sup>FN5</sup>

FN5. To prevail on its common law infringement claim, plaintiff must meet the same standard of demonstrating that it possesses a valid, protectable mark. See *Tri-Star Pictures, Inc. v. Leisure Time Prods. B.V.*, 17 F.3d 38, 43 (2d Cir.), cert. denied, 513 U.S. 987 (1994); *Pirone v. MacMillan, Inc.*, 894 F.2d 579, 581–82 (2d Cir.1990). The Court therefore considers these two claims together.

A mark is protectable if it is sufficiently distinctive. Courts rank marks, in ascending order of distinctiveness, as generic, descriptive, suggestive, fanciful, or arbitrary. See *Thompson Medical Co., Inc. v. Pfizer Inc.*, 753 F.2d 208, 212 (2d Cir.1985). Generic marks, which "describe the article or substance represented," *Bernard v. Commerce Drug Co., Inc.*, 774 F. Supp 103, 106 (E.D.N.Y.1991), are not distinctive and thus not protectable; they refer merely to the "genus of which the particular product is a species." See *Park 'N Fly, Inc. v. Dollar Park and Fly, Inc.*, 469 U.S. 189, 194 (1985).

Courts in the Second Circuit have consistently held that terms that merely describe the content of a particular media offering are generic. See, e.g., *Reese Publishing Co. v. Hampton International Communications, Inc.*, 620 F.2d 7, 11 (2d Cir.1980) ("Video Buyers Guide" generic as book title); *CES Publishing Corp v. St. Regis Publications*, 531 F.2d 11 (2d Cir.1975) ("Consumer Electronics Monthly" generic as magazine title); *GMT Productions v. Cablevision of New York*, 816 F.Supp. 207 (S.D.N.Y.1993) ("The Arabic Channel" generic as television channel name); see also *Genesee Brewing Co., Inc.*, 124 F.3d at 137 (finding that "Honey Brown," as applied to beer, was generic). The policy behind such decisions is that allowing registration of such a generic mark would contribute to a monopoly by precluding competitors from using a common word that merely describes the item or services in question. See *CES Publishing*, 531 F.2d at 13; *Sportschannel Associates v. Commissioner*, 903 F.Supp. 418, 423 (E.D.N.Y.1995).

In determining whether a particular mark is generic, courts in the Second Circuit look to several factors, including evidence of: (1) generic use of the term by competitors which plaintiff has not challenged or generic use by plaintiff himself; (2) dictionary definitions, which may be relevant while not dispositive; (3) generic usage in trade journals or newspapers; (4) testimony of persons in the trade; and (5) consumer surveys. See *Brandwynne*, 74 F.Supp.2d at 381 (citing 2 J. Thomas McCarthy, *McCarthy on Trademarks and Unfair Competition* § 12:13 (4th ed.1999) [hereinafter "*McCarthy*"]. As described above, the burden is on plaintiff to show that its unregistered mark is not generic.

\*8 Although plaintiff has presented evidence that it polices its mark against conflicting use, including court actions against allegedly infringing users (Defts. Exh. 2; Deposition of Moses Znaimer ["Znaimer Dep.," dated January 20, 2000, pp. 111–113), it has not met its burden on any of the other *Brandwynne*

Not Reported in F.Supp.2d, 2001 WL 243541 (S.D.N.Y.), 2001-1 Trade Cases P 73,275  
(Cite as: 2001 WL 243541 (S.D.N.Y.))

factors. Plaintiff presented neither objective testimony from industry professionals as to the plaintiff's mark not being generic, *see Self-Realization Fellowship Church v. Ananda Church of Self-Realization*, 59 F.3d 902 (9th Cir.1995) (according little weight to testimony of interested parties), nor any dictionary definition of “fashion television.” Defendants, by contrast, have provided a definition of “fashion” from the *New Shorter Oxford English Dictionary* (Clarendon Press 1993) presenting this term as a commonly used descriptive word for style; that dictionary gives examples (“fashion-paper” [“journal dealing with fashionable life”] and “fashion house” [“business establishment displaying and selling high-quality clothes”]) that suggest, by analogy, that fashion television refers to television that deals with (or sells) fashion. (Defts.' Exh. K.) Defendants have also provided evidence of generic use from an industry professional in the form of a published article by designer Isaac Mizrahi discussing the genre of fashion television. (Defts.' Exh. 7.)

Plaintiff's evidence of nongeneric use of “fashion television” to describe its show (Pl.'s Exh. 7) is outweighed by defendants' evidence of generic usage of “fashion television” in the press. (Defts.' Exh. 7; Defts.' Exh. 15, pp. 70, 71, 78 [examples in plaintiff's submission to PTO showing generic use of fashion television in press]).<sup>FN6</sup> The Court also gives weight to the PTO examiner's determination that “fashion television” is generic.<sup>FN7</sup> (Deft.'s Exh. F.) For these reasons, the Court finds that plaintiff has produced insufficient evidence to meet its burden of demonstrating that it has a valid trademark entitled to protection and that defendants are entitled to judgment as a matter of law on plaintiff's trademark infringement claims.

**FN6.** A brief Westlaw search by the Court of recent U.S. publications revealed several examples of generic use of “fashion television.” *See, e.g.,* Michelle Crowe, “Instant Style,” *Chi. Tribune*, Sept. 20, 2000 at p. 5,

available at 2000 WL 3710512.

**FN7.** The parties disagree as to the proper level of deference to accord the PTO determination. Although there appears no authority directly on point, the Court concludes that the determination should be given weight but is not dispositive. *Cf. Arrow Fastener Co. v. Stanley Works*, 59 F.3d 384 (2d Cir.1995) (PTO registration creates rebuttable presumption of secondary meaning); *Sterling Drug, Inc. v. Bayer AG*, 14 F.3d 733, 743 (2d Cir.1994) (court must make independent review of the likelihood of consumer confusion); *Goya Foods, Inc. v. Tropicana Prods., Inc.*, 846 F.2d 848, 853 (2d Cir.1988) (challenge to PTO determination is “virtually de novo”).

#### B. Trademark Dilution

Plaintiff also seeks injunctive relief against defendants' use of the infringing marks under federal and state trademark dilution laws. Section 43(c) of the Lanham Act, 15 U.S.C. § 1125(c), protects from dilution the distinctive quality of famous marks. Section 368-d of New York's General Business Law provides injunctive relief if there is a likelihood of dilution of the distinctive quality of a mark or trade name or in cases of unfair competition, “notwithstanding the absence of competition between the parties or the absence of confusion as to the source of goods or services.”

To prevail on a Lanham Act dilution claim, plaintiff must show ownership of a famous mark and dilution of that mark. *See Clinique Labs., Inc. v. Dep Corp.*, 945 F.Supp. 547, 561 (S.D.N.Y.1996). Similarly, plaintiff must show ownership of a distinctive mark and likelihood of dilution under New York General Business Law § 368-d. *See Hormel Foods Corp. v. Jim Henson Productions, Inc.*, 73 F.3d 497, 506 (2d Cir.1996); *McDonald's Corp. v. McBagel's, Inc.*, 649 F.Supp. 1268, 1280 (S.D.N.Y.1986). In both

Not Reported in F.Supp.2d, 2001 WL 243541 (S.D.N.Y.), 2001-1 Trade Cases P 73,275  
(Cite as: 2001 WL 243541 (S.D.N.Y.))

cases, a finding that the mark in question is generic precludes recovery. See *Harley-Davidson, Inc. v. Grottanelli*, 164 F.3d 806, 810 (2d Cir.1999); *Abercrombie & Fitch Co. v. Hunting World, Inc.*, 537 F.2d 4, 9 (2d Cir.1976); *Telford Home Assistance, Inc. v. TPC Home Care Services, Inc.*, 211 A.D.2d 674, 674 (2d Dept.1995); see also 4 *McCarthy* § 24.91, p. 24-154 (noting that “basic trademark principles” dictate that a mark must be distinctive to be eligible for protection under federal dilution law). Because the Court has concluded that “fashion television” is generic, plaintiff’s dilution claims must be dismissed.

### C. Unfair Competition

\*9 The fifth count of plaintiff’s Complaint includes a claim for common law unfair competition. The essence of unfair competition is “the bad faith misappropriation of the labors and expenditures of another, likely to cause confusion or to deceive purchasers as to the origin of the goods.” *Rosenfeld v. W.B. Saunders*, 728 F.Supp. 236, 249-50 (S.D.N.Y.1990) (quoting *Computer Assocs. Int’l, Inc. v. Computer Automation, Inc.*, 678 F.Supp. 424, 429 (S.D.N.Y.1987), aff’d, 923 F.2d 845 (2d Cir.1990)). Unfair competition “encompasses a broad range of unfair practices.” *Forschner Group, Inc. v. Arrow Trading Co., Inc.*, 904 F.Supp. 1409, 1427 (S.D.N.Y.1995). An unfair competition claim is not foreclosed by a finding that plaintiff’s mark is generic. See *Forschner Group, Inc.*, 30 F.3d at 358-59 (relief available even if mark generic “ab initio”); see also *Genesee Brewing Co.*, 124 F.3d at 149; *Murphy Door Bed Co. v. Interior Sleep Systems*, 874 F.2d 95, 102 (2d Cir.1989).

Where, as here, a plaintiff brings an unfair competition claim seeking equitable relief, the plaintiff must show a likelihood of confusion, see *Jeffrey Milstein, Inc. v. Greger, Lawlor, Roth, Inc.*, 58 F.3d 27, 35 (2d Cir.1995); *W.W.W. Pharmaceutical Co. v. Gillette Co.*, 984 F.2d 567, 576 (2d Cir.1993), and must also make “some showing of bad faith,” see *id.*; *Saratoga Vichy Spring Co. v. Lehman*, 625 F.2d 1037,

1044 (2d Cir.1980). The Court finds material facts in dispute on these elements sufficient to defeat summary judgment.

### I. Likelihood of Confusion

In *Polaroid Corp. v. Polarad Elecs. Corp.*, 287 F.2d 492, 495 (2d Cir.1961), the Second Circuit set out eight non-exclusive factors that courts should weigh to determine the likelihood of confusion: (1) the strength of the mark; (2) the degree of similarity between the two marks; (3) the proximity of the products; (4) the likelihood that the prior owner will “bridge the gap”; (5) actual confusion; (6) defendants’ good faith in adopting its mark; (7) quality of the defendants’ product; and (8) the sophistication of the buyers. See *Polaroid Corp. v. Polarad Elecs. Corp.*, 287 F.2d 492, 495 (2d Cir.1961). Although the *Polaroid* test is typically used in trademark infringement claims, most courts in the Second Circuit apply the *Polaroid* test to determine confusion under common law unfair competition. See, e.g., *Eastern America Trio Prods. v. Tang Electronic*, 97 F.Supp.2d 395, 420-22 (S.D.N.Y.2000); *La Cibeles, Inc. v. Adipar, Ltd.*, No. 99 Civ. 4129, 2000 WL 1253240 (S.D.N.Y. Sept. 1, 2000); *Cartier, Inc. v. Deziner Wholesale, L.L.C.*, No. 98 Civ. 4947, 2000 WL 347171, at \*6 (S.D.N.Y. Apr. 3, 2000). But see *Forschner Group, Inc.*, 904 F.Supp. at 1420-21 n. 15 (finding *Polaroid* inapplicable when mark is generic but using a similar analysis to determine likelihood of confusion). The Court takes up its analysis of these factors in turn.

\*10 (1) *Strength of the Mark*. Because plaintiff’s marks are generic, the strength of these marks must be demonstrated through secondary meaning. See *Genesee*, 124 F.3d at 150 and n. 4. To demonstrate secondary meaning, plaintiff must show that a “typical consumer is more likely to associate the trademark with the product, rather than with the thing it purportedly describes.” See *Bernard*, 774 F.Supp. at 106; see also *Two Pesos, Inc. v. Taco Cabana, Inc.*, 404 U.S. 763, 769 (1992). In *Genesee Brewing Co.*, the Second Circuit listed several factors to consider in

Not Reported in F.Supp.2d, 2001 WL 243541 (S.D.N.Y.), 2001-1 Trade Cases P 73,275  
(Cite as: 2001 WL 243541 (S.D.N.Y.))

determining secondary meaning: advertising expenditures; consumer studies linking the mark to a source; unsolicited media coverage of the product; sales success; attempts to plagiarize the mark; and length and exclusivity of the mark's use. *See* 124 F.3d at 143 n. 4.

Plaintiff has presented evidence that it has used the FT Marks since about 1985, that the Program has reached a national audience via VH-1 and E! for almost 10 years, and that the Program has attracted substantial unsolicited media coverage and has had extensive success on VH-1. Plaintiff also points to defendants' actions as proof that the marks are worth plagiarizing. Although plaintiff has presented neither consumer studies nor evidence of its advertising expenditures, the Court finds that the evidence cited above, taken in the light most favorable to plaintiff, could lead a reasonable jury to conclude that the FT Marks have acquired secondary meaning and are strong. *See Lang v. Retirement Living Pub. Co, Inc.*, 949 F.2d 576, 578–80 (2d Cir.1991); *see also Walt Disney Co. v. Cable News Network*, 231 U.S.P.Q. 235 (C.D.Cal.1986) (three months of broadcast on CNN sufficient to give secondary meaning to the television program title “Business Day.”). This factor therefore weighs in plaintiff's favor.

(2) *Similarity of the Marks*. In determining whether the two marks are similar, the Court looks to the effect on prospective purchasers. *See McGregor–Doniger Inc. v. Drizzle Inc.*, 599 F.2d 1126, 1133 (2d Cir.1979) (crucial question is whether similarity is likely to “provoke confusion”). Defendants concede that the infringing marks “look[ ] similar.” ( **Lisowski** Dep. p. 91.) This factor thus favors plaintiff.

(3) *Similarity of the Products*. Similarity is “premised on whether the total effect of the logos and the context in which they are found [is] likely to cause confusion among prospective consumers .” *See Something Old, Something New, Inc. v. QVC, Inc.*, No. 98 Civ. 7450, 1999 WL 1125063 (S.D.N.Y. Dec. 8, 1999). It is undisputed that the allegedly infringing

marks do not appear on defendants' Channel itself. Consequently, the Court examines the “total effect” of the marks in the context of the fashion and media industries, where the parties compete for advertisers, trade contacts, and content. In this context, the editorial distinctions between the parties' products are not evident to the relevant consumers, and a trier of fact could reasonably conclude the products appear similar to the industry professionals. This factor favors plaintiff.

\*11 (4) *Bridging the Gap*. Because plaintiff's mark is generic, it is not entitled to bridge the gap. *Cf. Forscher Group*, 904 F.Supp. at 1420–23. This factor is neutral.

(5) *Actual Confusion*. This factor considers whether any consumers “have actually been confused by the products bearing the allegedly confusing marks.” *See Centaur Communications v. A/S/M Communications*, 830 F.2d 1217, 1227 (2d Cir.1987). Evidence of actual confusion may consist of consumer survey evidence or “anecdotal evidence of confused consumers in the marketplace.” *Jordache Enterprises, Inc.*, 841 F.Supp. at 518; *see also id.* Plaintiff alleges several incidents in which fashion professionals failed to correctly distinguish the parties. Plaintiff's evidence in support of these allegations, however, consists solely of statements from various of plaintiff's employees that are both self-serving and predominantly inadmissible hearsay. Although **Lisowski** admitted in his deposition that he is “sure that there has been confusion” ( **Lisowski** Dep. at 114), he testified that he did not know of any such confusion (*id.*). Because plaintiff has produced no competent evidence of actual confusion, the Court finds that this factor favors defendants.

(6) *Good Faith*. Although subsequent producers have the right to use generic marks, they have “an obligation ‘to use every reasonable means to prevent confusion’ as to the source of the products.” *Genesee*, 124 F.3d at 150 (citing *Kellogg*, 305 U.S. at 121). The

Not Reported in F.Supp.2d, 2001 WL 243541 (S.D.N.Y.), 2001-1 Trade Cases P 73,275  
(Cite as: 2001 WL 243541 (S.D.N.Y.))

parties have raised a question of material fact as to whether defendants chose to mimic the FT Marks in order to get a “foot in the door” of the fashion programming market (as plaintiff contends) or whether defendants relied in good faith on the opinion of legal counsel that their use of the FT Marks did not infringe on plaintiff's marks (as defendants contend). Plaintiff points to defendants' May 1997 e-mail as evidence of defendants' intentional copying. See *Jordache Enterprises, Inc.*, 841 F.Supp. at 519 (intentional copying of mark may be evidence of intent to create confusion among products). Defendants cite this same e-mail to show their good faith reliance on legal counsel in using the marks. See *Arrow Fastener*, 59 F.3d at 397 (knowledge of prior use can be consistent with good faith); *W.W.W. Pharmaceutical Co. v. Gillette Co.*, 984 F.2d 567, 575 (2d Cir.1993) (good faith can be established by reliance on legal opinion). This disputed question of intent is “best left in the hands of the trier of fact.” *The Sports Authority, Inc. v. Prime Hospitality Corp.*, 89 F.3d 955, 964 (1995). In deciding this motion, an inference can be drawn in favor of plaintiff.

(7) *Quality*. This factor “is primarily concerned with whether the senior user's reputation could be jeopardized” by the inferior quality of defendant's product. *Trustees of Columbia Univ. v. Columbia/HCA Healthcare Corp.*, 964 F.Supp. 733, 747 (S.D.N.Y.1997). The parties agree that plaintiff produces a polished, magazine-format program, while defendants essentially broadcast runway footage set to music. The alleged inferiority of defendant's programming could jeopardize plaintiff's reputation for high quality programming, see *Hormel Foods Corp. v. Jim Henson Prods*, No. 95 Civ. 5473, 1995 WL 567369 (S.D.N.Y. Sept. 25, 1995). On the other hand, the difference between the quality of the programs reduces the likelihood of confusion. See *Girl Scouts v. Bantam Doubleday Dell Publishing Group, Inc.*, 808 F.Supp. 1112, 1129 (S.D.N.Y.1992). Because neither party provided adequate briefing or evidence on this factor, the Court finds that it is neutral for purposes of

the motion.

\*12 (8) *Sophistication of Buyers*. This factor is premised on “the belief that unsophisticated consumers aggravate the likelihood of confusion,” *Hasbro, Inc. v. Lanard Toys, Ltd.*, 858 F.2d 70, 78 (2d Cir.1988), and that consumer sophistication typically “militates against a finding of a likelihood of confusion,” *Centaur Communications Ltd.*, 830 F.2d at 1228. Defendants in this case have used the infringing marks exclusively to market and promote their Channel within the fashion and media industries. For this reason, only the sophistication of the professionals in these industries is relevant in analyzing this *Polaroid* factor. Because plaintiff concedes that these professionals are sophisticated (Pl.'s Reply p. 8), the Court finds that this factor favors defendant.

#### (9) *Summary of Polaroid Factors*

In sum, four of the factors favor plaintiff, two favor defendant, and two are neutral. Balancing these factors, the Court concludes that a trier of fact could reasonably find a likelihood of confusion. Summary judgment is inappropriate because material facts remain in dispute on at least three factors. See *Cadbury Beverages, Inc. v. Cott Corp.*, 73 F.3d 474, 483–84 (2d Cir.1996).

#### 2. *Bad Faith*

As discussed in the preceding analysis, an inference of defendants' bad faith may be drawn from plaintiff's evidence for purposes of deciding this motion, and resolution of the question of bad faith is best left for the trier of fact.

For the reasons stated above, the Court concludes that plaintiff has made a prima facie showing of common law unfair competition. Because the evidence reveals substantial disputes over material facts, the Court denies summary judgment on this claim.

#### V. PLAINTIFF'S MOTION FOR SUMMARY

Not Reported in F.Supp.2d, 2001 WL 243541 (S.D.N.Y.), 2001-1 Trade Cases P 73,275  
(Cite as: 2001 WL 243541 (S.D.N.Y.))

#### JUDGMENT

Defendants' sole counterclaim <sup>FN8</sup> alleges that plaintiff engaged in attempted monopolization of the fashion television broadcasting market in violation of the Sherman Act, 15 U.S.C. § 2.<sup>FN9</sup> (Defendants' First Amended Answer to First Amended Complaint [Defts.' Amended Answer"] ¶¶ 125–40.) Plaintiff moves to dismiss this claim under Rule 12(b)(6) or for summary judgment. Because both parties engaged in discovery and submitted outside materials for the Court's consideration, the Court decides plaintiff's motion under the Rule 56 summary judgment standard. See Rule 12(b). The Court finds that defendants' counterclaim fails as a matter of law.

**FN8.** As discussed above, the remainder of the counterclaims in defendants' original pleadings were withdrawn and the Court denied defendants leave to add other counterclaims after the deadline set in the Scheduling Order for lack of good cause.

**FN9.** Because the Court denied defendants leave to add new counterclaims, the Court declines to permit a claim for unfair competition as an alternative to defendants' attempted monopolization claim. (Defts.' Mem. p. 32). Defendants also seek, as an amendment to their Lanham Act counterclaim, a declaratory judgment “that the application for [the FT Marks] were fraudulently made, are generic, and all intellectual property interest of Plaintiff in the terms Fashion, Television, and FT. [sic]” (Defts.' Amended Answer ¶¶ 108–111.) Because defendants fail to articulate a legal basis for this claim, the Court declines to consider it.

To make out a prima facie case of attempted monopolization and survive summary judgment, defendants must offer evidence that plaintiff (a) engaged in anticompetitive or predatory conduct (b) with a specific intent to monopolize and (c) with a dangerous

probability of achieving monopoly power. See *Spectrum Sports, Inc. v. McQuillan*, 506 U.S. 447, 456 (1993); *Twin Laboratories, Inc. v. Weider Health & Fitness*, 900 F.2d 566, 570 (2d Cir.1990). As the Second Circuit explained in *Twin Laboratories*, “sufficient market share by the defendant” is a threshold showing because such market share is “the primary indicator of the existence of a dangerous probability of success.” *Twin Laboratories*, 900 F.2d at 570. Market share is ascertained with reference to the relevant product and geographic markets. See *Walker Process Equipment, Inc. v. Food Machinery & Chemical Corp.*, 382 U.S. 172, 177 (1965).

**\*13** The Court understands defendants' antitrust claim to refer to the United States market for fashion programming. Defendants have not shown that plaintiff's market share, in the specific context of the market for fashion programming, suggests a dangerous probability of monopoly in this market or that plaintiff is likely to gain a monopoly in the foreseeable future.<sup>FN10</sup> The undisputed evidence is that plaintiff possesses less than a twenty-five percent share of the United States market for fashion programming (Declaration of Marcia Martin, dated September 9, 1999, ¶ 10), and that plaintiff competes with several other producers of fashion programming—including CNN, MTV, E!, and defendants—within this market. Defendants have offered no evidence that there exist barriers to entry or other factors that would suggest that plaintiff's market power is not adequately reflected by its current market share.<sup>FN11</sup> The Court finds that the evidence proffered by defendants of plaintiff's market share does not support a Sherman Act claim. Accordingly, defendants' antitrust counterclaim is dismissed as a matter of law.

**FN10.** Defendants have argued that the Second Circuit's recent decision in *Prime-time 24 Venture v. National Broadcasting Company, Inc.*, 219 F.3d 92 (2d Cir.2000) is “controlling” in this case. The *Primetime* court considered the antitrust standards gov-

Not Reported in F.Supp.2d, 2001 WL 243541 (S.D.N.Y.), 2001-1 Trade Cases P 73,275  
(Cite as: 2001 WL 243541 (S.D.N.Y.))

erning concerted actions by a group of television networks against a satellite broadcaster. Relying on the *Noerr-Pennington* doctrine, the court found that plaintiff had stated a claim under the Sherman Act sufficient to survive a [Rule 12\(b\)\(6\)](#) motion to dismiss. The court also held that a series of legal proceedings by a company against one or more of its competitors did not violate the Sherman Act unless the acts were “part of a pattern or practice of successive filings undertaken essentially for purposes of harassment” and “brought pursuant to a policy of starting legal proceedings without regard to the merits and for the purpose of injuring a market rival.” *Id.* at 101. Because defendants fail to present any evidence in support of their claim that plaintiff started this proceeding, or the French action, without regard to the merits and solely for purposes of harassment, defendants cannot rely on *Prime-time* to defeat summary judgment on their antitrust counterclaim.

**FN11.** The Court also rejects defendants' contention that plaintiff's application for a license to produce a 24-hour fashion channel in Canada is likely to result in plaintiff's domination of the United States market. In determining whether to apply the Sherman Act to a foreign act, “the inquiry should be directed primarily toward whether the challenged restraint has, or is intended to have, any anticompetitive effect upon United States commerce, either commerce within the United States or export commerce from the United States.” See *Canada v. Interbank Card Assoc.*, 666 F.2d 6, 8 (2d Cir.1981); see also *McElderry v. Cathay Pacific Airways, Ltd.*, 678 F.Supp. 1071, 1077 (S.D.N.Y.1988)(conduct must have a “direct, substantial, and reasonably foreseeable effect” on United States commerce). The Court

finds that defendants have failed to produce competent evidence that plaintiff's application for a Canadian broadcasting license, even if successful, will have an anticompetitive effect upon United States commerce, or that plaintiff intended such an effect.

## VI. SANCTIONS

### A. Defendants' Motion for Sanctions

Defendants allege that plaintiff failed to divulge the status of its trademark application, falsely relied on a “pending” application after the application had been denied, failed to produce the PTO file wrapper under automatic disclosure rules of [Fed.R.Civ.P. 26\(a\)\(1\)](#), and failed to produce the Canadian trademark file wrapper. Defendants claim further that plaintiff's counsel failed in their ethical obligations, pursuant to N.Y. Professional Disciplinary Rules § 1200.37 and § 1200.33, to reveal the application denial to the Court and defense counsel. The Court finds that sanctions are not warranted for the reasons that follow.

First, defendants' allegations concerning the nonproduction of the PTO wrapper are without merit because during the relevant time period, Local Rule 26.4 rendered inoperative the automatic disclosure provisions of [Fed.R.Civ.P. 26](#).

Second, defendants' allegations concerning the Canadian wrapper are insufficient to warrant sanctions. [Rule 11\(d\)](#) specifically excludes discovery from the ambit of its sanctions; [Fed.R.Civ.P. 37\(d\)](#) provides sanctions for misconduct during discovery, but requires that a party moving for sanctions certify “that the movant has in good faith conferred or attempted to confer with the party not making the disclosure in an effort to secure the disclosure without court action.” [Fed.R.Civ.P. 37\(a\)\(2\)\(A\)](#). The Court has no evidence of such certification. Moreover, defendant has not provided the Court with reason to question plaintiff's claims that it produced the Canadian wrapper when requested to do so in proper form; that defendants' earlier document requests were “vague and overly

Not Reported in F.Supp.2d, 2001 WL 243541 (S.D.N.Y.), 2001-1 Trade Cases P 73,275  
(Cite as: **2001 WL 243541 (S.D.N.Y.)**)

broad”; and that defendants failed to respond to plaintiff’s objections and requests for clarification.

Third, defendants provide no evidence that plaintiff’s counsel intended to mislead the Court or opposing counsel on the issue of its pending trademark application.

**\*14** For these reasons, the Court finds that sanctions are not warranted against plaintiff or its counsel.

#### *B. Plaintiff’s Motion for Sanctions*

Plaintiff moves for sanctions against defense counsel. The Court concludes that sanctions are not warranted.

Plaintiff first claims that defense counsel undertook “little to no factual or legal investigation” prior to filing the initial counterclaims, initially refused to modify these claims, and “merely attempted to recast” the claims subsequent to plaintiff’s filing of its initial motion to dismiss. (Pl.’s Mem. p. 20.) In determining whether an attorney should be sanctioned for bringing a frivolous claim, the relevant inquiry is whether a competent attorney could have formed the reasonable belief that the pleadings were “warranted by existing law or a good faith argument for the extension, modification or reversal of existing law.” *Eastway Construction Corp. v. City of New York*, 762 F.2d 243, 254 (2d Cir.1985). It is important to note that it must be ‘patently clear that a claim has absolutely no chance of success.’ *Sussman v. Bank of Israel*, 56 F.3d 450 (2d Cir.1995) (quoting *Oliveri v. Thompson*, 803 F.2d 1265, 1275 (2d Cir.1986); see also *McElderry v. Cathay Pacific Airways*, 678 F.Supp. 1071, 1079 (S.D.N.Y.1988) (no sanctions warranted in antitrust claim). Although defendants’ antitrust claim was without merit, it is not so ‘patently clear’ that it could not succeed that sanctions are warranted.

Plaintiff also claims that defendants’ submissions are “riddled with misrepresentations,” including (1)

describing plaintiff’s French action as based on a “fake” copyright when the French decision made no such determination; (2) describing plaintiff as applying to the government of Canada for a “monopoly” when plaintiff was submitting an application pursuant to Canadian law; and (3) suggesting to the Court that a press release on plaintiff’s website was lying about the status of the French action, rather than merely appearing in the archive of old documents. A Court may impose sanctions on counsel under [Rule 11\(b\)\(3\)](#) for allegations and other factual contentions that lack evidentiary support. See *O’Brien v. Alexander*, 101 F.3d 1479, Although the Court agrees that defendants’ statements were misleading, the Court does not find that the statements rise to the level of direct falsehood that typically warrants sanction under [Rule 11\(b\)\(3\)](#). See, e. g., *Polar International Brokerage Corp. v. Reeve*, 2000 WL 1127936, \*4 (S.D.N .Y. Aug. 8, 2000) (sanctions imposed when counsel alleged two factually contradictory positions). The Court does not condone these statements, but merely holds that they do not merit the application of sanctions in this instance.

#### VII. CONCLUSION

For the reasons set forth above, the Court denies in part and grants in part defendants’ request for reconsideration of this Court’s Order denying leave to amend its answer and counterclaims, grants summary judgment on defendants’ counterclaims, grants summary judgment on plaintiff’s trademark infringement and trademark dilution claims, denies summary judgment on plaintiff’s unfair competition claim, and denies the parties’ motions for sanctions.

**\*15** The parties are directed to submit a joint pretrial order and accompanying memoranda, in accordance with the Court’s Individual Rules, by April 10, 2001.

SO ORDERED.

Not Reported in F.Supp.2d, 2001 WL 243541 (S.D.N.Y.), 2001-1 Trade Cases P 73,275  
(Cite as: **2001 WL 243541 (S.D.N.Y.)**)

S.D.N.Y.,2001.

Chum Ltd. v. Lisowski

Not Reported in F.Supp.2d, 2001 WL 243541  
(S.D.N.Y.), 2001-1 Trade Cases P 73,275

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Not Reported in F.Supp.2d, 2002 WL 1143208 (S.D.N.Y.), 63 U.S.P.Q.2d 1578  
 (Cite as: 2002 WL 1143208 (S.D.N.Y.))

**H**

United States District Court, S.D. New York.  
**CHUM LIMITED**, Plaintiff,

v.

Adam **LISOWSKI** et al., Defendant.

No. 98 Civ. 5060(CBM).  
 May 29, 2002.

*MEMORANDUM OPINION AND ORDER*

MOTLEY, J.

\*1 On April 18, 2002, the court issued its findings of fact and conclusions of law in this matter, holding that **Chum** failed to meet its burden of demonstrating either that its marks have acquired secondary meaning or that defendants' use of their marks has caused a likelihood of confusion. **Chum** has moved the court for reconsideration under Rules 52(b) and 59(e) of the Federal Rules of Civil Procedure, arguing that the court placed undue weight on secondary meaning and likelihood of confusion among consumers and too little weight on secondary meaning and likelihood of confusion among industry professionals. For the reasons set forth below, **Chum's** motion for reconsideration is DENIED.

To begin with, **Chum's** motion greatly mischaracterizes the nature of the court's opinion. Far from "overlook[ing]" the effect on industry professionals, *see Chum* Mot. at 1, the court expressly analyzed and gave appropriate weight to whether industry professionals associate **Chum's** marks with their source and whether industry professionals are likely to be confused by defendants' marks. *See Op.* at 4-5 (finding that **Chum** advertised extensively in trade journals and routinely attended important industry events, but concluding nonetheless that the "advertising expenditures" factor weighed against a finding of secondary

meaning because **Chum** essentially engaged in no direct consumer advertising at all); *Op.* at 11 (finding actual confusion among industry professionals, but concluding nonetheless that this factor weighed against a finding of likelihood of confusion because **Chum** presented no evidence whatsoever of actual confusion among consumers). Indeed, the court expressly stated twice in its opinion that the effect on industry professionals was relevant both to the secondary meaning and to the likelihood of confusion inquiries. *See Op.* at 5 ("Although it is certainly relevant that **Chum** spent substantial sums of money promoting its program to industry executives, the court finds it at least equally relevant that **Chum** has not adequately demonstrated it spent much, if anything at all, attempting to promote its program directly to the viewing public."); *Op.* at 11 ("This is not to say that the evidence of confusion among industry professionals presented by **Chum** is irrelevant. But it is once again at least equally relevant that there is no evidence at all of actual confusion among viewers.").

What **Chum** really means to say is not that the court "overlooked" the effect on industry professionals, but rather that the court failed to give that issue dispositive weight, choosing instead to consider the effect of the marks in question *both* on industry professionals *and* on consumers. This undoubtedly was the correct approach. It simply cannot be that the industry professional level is, as **Chum** puts it, "the level where the economic competition takes place," *see Chum* Mot. at 5, implying that it is entirely irrelevant to **Chum's** success whether its show has an audience of forty viewers or forty million. To be sure, it certainly is important to **Chum** (and, consequently, to the unfair competition inquiry) whether industry professionals recognize **Chum's** marks and whether they confuse **Chum's** marks with those of its competitors. The court continues to believe, however, that it is at least as important to **Chum** and to the unfair

Not Reported in F.Supp.2d, 2002 WL 1143208 (S.D.N.Y.), 63 U.S.P.Q.2d 1578  
(Cite as: 2002 WL 1143208 (S.D.N.Y.))

competition inquiry whether consumers recognize **Chum's** marks and whether consumers confuse **Chum's** marks with those of its competitors.

\*2 **Chum's** position finds no support in the cases it cites. **Chum** suggests, for example, that in *Centaur Communications, Ltd. v. A/S/M Communications, Inc.*, 803 F.2d 1217 (2d Cir.1987), the Second Circuit held that the relevant market in an unfair competition case involving a weekly television news program was "executives in the international marketing and advertising community." See **Chum** Mot. at 4. The *Centaur* court expressly stated, however, that it was accepting that definition (which the district court had proffered) only because neither party challenged it. See *Centaur*, 830 F.2d at 1222. Indeed, the panel repeatedly made clear that the relevant market in an unfair competition case generally includes *the consuming public*. See *id.* at 1221 (plaintiff must establish "that the purchasing public associates goods designated by a particular mark with but a single ... source"); *id.* ("The focus of secondary meaning therefore is the consuming public."); *id.* ("Although the mark owner strives to create a secondary meaning for its product, it is the consuming public which, in effect, determines whether that effort has succeeded.")<sup>FN1</sup>

FN1. *Centaur* also cited with approval *Inc. Publishing Corp. v. Manhattan Magazine, Inc.*, 616 F.Supp. 370 (S.D.N.Y.1985). In that case, which involved magazine titles, the district court found that the relevant market included magazine *subscribers* in addition to advertisers and distributors - a fact that the *Centaur* panel expressly recognized. See *Centaur*, 830 F.2d at 1221-22.

The district court cases **Chum** cites are similarly inapposite. In *M'Otto Enters., Inc. v. Redsand, Inc.*, 831 F.Supp. 1491 (W.D.Wa.1993), the court plainly considered evidence of likelihood of confusion "at both the retail and consumer levels of the market" - precisely what **Chum** faults the court for doing in the

instant case. *Id.* at 1504 (emphasis added). And *Television Enter. Network, Inc. v. Entertainment Network, Inc.*, 630 F.Supp. 244 (D.N.J.1986), involved an application for a preliminary injunction, not a final adjudication of the merits of the dispute. Although the court relied in part on evidence of actual confusion among industry professionals (in addition to other "overwhelming" evidence of confusion, *id.* at 248) in concluding that the movant had demonstrated a likelihood of success on the merits of its claims, nothing in the court's opinion suggested that consumer confusion would be unimportant to the ultimate inquiry.

Finally, it is worth noting that **Chum** mischaracterizes the record by stating that its proposed findings "had asked the Court to find that **Chum** had established secondary meaning [and likelihood of confusion] in two separate categories of customers/consumers" - trade professionals and viewers. **Chum** Mot. at 1 (emphasis in original). **Chum's** proposed findings plainly did no such thing. To the contrary, **Chum's** factor-by-factor analysis addressed effect on industry professionals and effect on the consuming public simultaneously, just as the court's opinion did. Never once did **Chum's** analysis distinguish between the two, much less argue that one should carry more weight than the other. It is therefore most disingenuous for **Chum** to fault the court for "consider[ing] the impact on the two levels as part of a single analysis" rather than "separately assess[ing] secondary meaning and likelihood of confusion at each level." *Id.* at 1-2 (emphasis in original).

\*3 For the foregoing reasons, **Chum's** motion for reconsideration is hereby DENIED.

S.D.N.Y.,2002.

**Chum** Ltd. v. Lisowski

Not Reported in F.Supp.2d, 2002 WL 1143208 (S.D.N.Y.), 63 U.S.P.Q.2d 1578

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Not Reported in F.Supp.2d, 2002 WL 1143208 (S.D.N.Y.), 63 U.S.P.Q.2d 1578  
(Cite as: 2002 WL 1143208 (S.D.N.Y.))

198 F.Supp.2d 530, 63 U.S.P.Q.2d 1569  
(Cite as: 198 F.Supp.2d 530)

**H**

United States District Court,  
S.D. New York.

**CHUM LIMITED**, Plaintiff,  
v.  
Adam **LISOWSKI** et al., Defendant.

No. 98 Civ. 5060(CBM).  
April 18, 2002.

Producer of television program devoted to fashion topics, under trademarks involving term “Fashion Television,” sued producer of cable network featuring displays of models, using title “Fashion TV” and variations, claiming trademark and unfair competition violations. Following grant of summary judgment on trademark claims, 2001 WL 243541, Wood, J., bench trial was held on unfair competition claims. The District Court, Motley, J., held that: (1) “Fashion Television” marks had not acquired secondary meaning required for unfair competition claim, and (2) alternatively, necessary likelihood of confusion did not exist.

Judgment for cable network producer.

West Headnotes

**[1] Trademarks 382T ↪ 1628(3)**

382T Trademarks

382TIX Actions and Proceedings

382TIX(C) Evidence

382Tk1620 Weight and Sufficiency

382Tk1628 Secondary Meaning

382Tk1628(3) k. Consumer data and market research; tests and surveys. Most Cited Cases

(Formerly 382k587 Trade Regulation)

Trademarks using term “Fashion Television,” used with television shows involving fashion industry interviews, had not acquired secondary meaning, for purposes of unfair competition suit against producer of cable network showing continuous modeling displays, under Lanham Act and common law; claimant failed to show direct survey evidence of United States viewership, or survey evidence associating marks with program. Lanham Trade-Mark Act, § 1 et seq., 15 U.S.C.A. § 1051 et seq.

**[2] Trademarks 382T ↪ 1103**

382T Trademarks

382TIII Similarity Between Marks; Likelihood of Confusion

382Tk1100 Relationship Between Goods or Services Underlying Marks

382Tk1103 k. Particular goods and services, relationship between. Most Cited Cases

(Formerly 382k513 Trade Regulation)

Necessary likelihood of confusion, required for unfair competition action under Lanham Act and common law, was absent in suit by producer of television program using trademarks involving term “Fashion Television,” against producer of cable network using marks involving term “Fashion TV;” program featured interviews with persons in fashion field and other journalistic projects, while cable network simply showed models on runways. Lanham Trade-Mark Act, § 1 et seq., 15 U.S.C.A. § 1051 et seq.

\*530 Kenneth A. Plevan, Bruce J. Goldner, Steven M. Rosenthal, Skadden, Arps, \*531 Slate, Meagher & Flom, LLP, New York City, for plaintiff.

198 F.Supp.2d 530, 63 U.S.P.Q.2d 1569  
(Cite as: 198 F.Supp.2d 530)

Raymond J. Dowd, New York City, Jason E. Bogli, Dowd & Marotta, LLC, Brooklyn, NY, for defendants.

### OPINION

MOTLEY, District Judge.

Plaintiff **Chum** Limited (“**Chum**”) uses “Fashion Television” and other similar marks in connection with its weekly television program featuring stories related to fashion. Defendant Adam **Lisowski** (“**Lisowski**”) together with certain companies he owns and controls (collectively “defendants”) use “Fashion TV” and other similar marks in connection with their 24-hour cable television channel devoted to fashion. **Chum** brought this action for injunctive relief, alleging trademark infringement, dilution, and unfair competition under the Lanham Act and the common law.

In March 2001 Judge Wood (to whom this case was then assigned) granted defendants partial summary judgment, dismissing **Chum**'s trademark infringement and dilution claims based upon her finding that **Chum**'s “Fashion Television” marks are generic. See *Chum Ltd. v. Lisowski*, 2001 WL 243541 (S.D.N.Y. Mar.12, 2001). However, Judge Wood denied summary judgment with respect to **Chum**'s unfair competition claims. See *id.* at \*9–\*12.

**Chum**'s unfair competition claims were tried before this court at a bench trial held from December 3 to December 10, 2001. Having reviewed all of the testimony and the exhibits received into evidence, the court hereby sets forth its findings of fact and conclusions of law pursuant to Federal Rule of Civil Procedure 52(a). As discussed more fully below, the court holds that **Chum** failed to meet its burden of demonstrating either that its marks have acquired secondary meaning or that there is sufficient likelihood of consumer confusion. Accordingly, the court enters judgment in favor of defendants.

### BACKGROUND

**Chum**, a Canadian corporation headquartered in Toronto, is a large international media company that produces both television programs and entire television channels containing a wide variety of content, such as news, performing arts, and science fiction. PX–25; Martin Tr. 32:1–33:13.

**Chum** began its foray into fashion programming in 1985 by launching “FT–Fashion Television,” a thirty-minute weekly magazine program. PX–10; Martin Tr. 37:3–40:1. Each episode of this show is comprised of four to five distinct segments, such as interviews with designers or photographers, reports on recent events involving celebrities, or other pieces touching upon such topics as fashion, art, and architecture. Martin Tr. 37:16–24. Jeanne Beker has been the host of the show since its debut. PX–43; Martin Tr. 45:24–46:4. **Chum** typically produces thirty-nine regular half-hour episodes and one full-hour special episode of “FT–Fashion Television” each year. Martin Tr. 37:3–8.

**Chum**'s program initially ran only in Canada, where it was very popular and won numerous awards. Martin Tr. 47:18–21. The program first aired in the United States in 1991 and, after debuting in Los Angeles, the VH–1 cable television network licensed it and broadcast it nationally from 1992 until 1999. Martin Tr. 48:14–17. VH–1 dropped the show in 1999, and since that time it has been broadcast nationally on the E! and Style cable television networks. Martin Tr. 57:20–58:3.

**Chum** initially called its program “FTV” but soon changed the name to “Fashion Television,” in part because it learned that there already was a show using the name \*532 “FTV” (as an abbreviation for “Fun TV”). Martin Tr. 41:3–17. **Chum** soon settled on the program's current name—“FT–Fashion Television”—although people (including **Chum** employees,

198 F.Supp.2d 530, 63 U.S.P.Q.2d 1569  
(Cite as: 198 F.Supp.2d 530)

members of the media, advertisers, members of the viewing public, etc.) often refer to the program unofficially as “Fashion Television,” “Fashion TV,” or “FTV” (collectively **Chum's** “ ‘Fashion Television’ marks”). PX-23; PX-32; PX-52; Tapp Tr. 256:3-22; Helmrich Tr. 383:21-25; Martin Tr. 43:3-18. At some point during the early 1990s **Chum** also added to the show's name the subtitle “The Original. The Best.”—thus rendering the full name of the show “FT–Fashion Television. The Original. The Best.” Martin Tr. 42:24-43:2; 44:21-45:14.

Defendant **Lisowski** (who is also known as Michel Adam) is a Polish citizen residing in Paris. Defendant Fashion TV Paris, S.A.R.L. (“Fashion TV Paris”) is a French limited liability company headquartered in Paris. Defendant F.TV, Ltd., a British Virgin Islands holding company, owns Fashion TV Paris. **Lisowski** is the Managing Director and sole officer of Fashion TV Paris and F.TV, Ltd. PX-113; **Lisowski** Dep. 40:3-42:19, 45:5-10.

In May 1997 defendants launched a 24-hour fashion television channel in France called “F.TV.” PX-132; PX-135. The programming aired on defendants' channel is quite different from **Chum's** program. Whereas “FT–Fashion Television” is a magazine-style show consisting almost entirely of interviews and other types of actual reporting, defendants' programming consists exclusively of three to five minute clips from fashion shows in which models walk down runways displaying their designer clothing. These continuous runway clips are set to music and contain no dialog whatsoever, nor are they accompanied by interviews or any other type of actual reporting. PX-77; PX-136; **Lisowski** Dep. 49:14-50:5. Several witnesses likened this format to “video wallpaper.” Helmrich Tr. 433:16-18; Rosenberger Tr. 706:18-21.

Defendants' channel was introduced in the United States in 1998. PX-90 at P01080; PX-100 at P01669; **Lisowski** Dep. 54:2-22. From May through Decem-

ber of that year, Time Warner Cable carried half-hour and full-hour segments of defendants' fashion programming on channel 35 in Manhattan under the names “Fashion TV” and “F. L'Original.” **Lisowski** Dep. 55:18-20. Since the summer of 1998, defendants' channel has aired 24 hours a day on Charter Cable's channel 68 in Miami. PX-77; **Lisowski** Dep. 54:2-9, 55:2-9. In addition to “F.TV,” “Fashion TV,” and “F. L'Original,” defendants' channel is also known to some and sometimes is referred to as “Fashion TV Paris,” “Fashion TV,” “FTV,” “Fashion TV The Original,” and “F.TV L'Original” (collectively defendants' “ ‘Fashion TV’ marks”). PX-67; PX-75A; PX-86; PX-113; PX-119; PX-140; DX-T at 43.

Representatives of **Chum** first met **Lisowski** in April 1997 at a television industry trade show in France. **Lisowski** approached **Chum's** booth seeking to license “FT–Fashion Television” from **Chum** and to broadcast it on his French channel, which he was then on the verge of launching. Tapp Tr. 272:3-274:3; **Lisowski** Dep. 83:1-10. **Chum** explained that “FT–Fashion Television” was already under exclusive license with VH-1, but over the next several weeks **Chum** and **Lisowski** entered into negotiations regarding the licensing of “Ooh La La,” another fashion program produced and distributed by **Chum**. PX-134. Negotiations broke down, however, when **Chum** executives learned that **Lisowski** was using the name “Fashion Television” in connection with his recently launched fashion channel. PX-135; Tapp Tr. 276:2-279:25. **Chum** appealed to **Lisowski**,\*533 both informally and formally, to refrain from using the name “Fashion Television” to describe his channel. PX-138; PX-58. The parties' attempts to resolve their dispute amicably failed, however, and **Chum** eventually filed the instant lawsuit.<sup>FN1</sup>

FN1. **Chum's** original complaint sought both money damages and injunctive relief. **Chum** subsequently abandoned its claim for damages, however, and currently seeks only injunctive relief.

198 F.Supp.2d 530, 63 U.S.P.Q.2d 1569  
(Cite as: 198 F.Supp.2d 530)

## **DISCUSSION**

### **A. Legal Standard**

The fact that **Chum's** “Fashion Television” marks are, as Judge Wood found, generic does not preclude a finding that defendants have violated the Lanham Act and the common law by engaging in unfair competition. See *Forschner Group, Inc. v. Arrow Trading Co.*, 30 F.3d 348, 358–59 (2d Cir.1994); *Murphy Door Bed Co. v. Interior Sleep Sys.*, 874 F.2d 95, 102 (2d Cir.1989). As the Second Circuit recently explained, in order to recover on its unfair competition claims **Chum** must demonstrate by a preponderance of the evidence (1) secondary meaning, *i.e.*, that consumers associate **Chum's** marks with its program; and (2) a likelihood of confusion. See *Genesee Brewing Co. v. Stroh Brewing Co.*, 124 F.3d 137, 150 (2d Cir.1997). Additionally, defendants escape liability if the court finds they have “used every reasonable means to prevent confusion as to the source of the products.” *Id.* (internal quotation omitted).

### **B. Secondary Meaning**

[1] The essential question with respect to secondary meaning is whether the public is moved to consume a product because of its source. See *Paper-Cutter, Inc. v. Fay's Drug Co.*, 900 F.2d 558, 564 (2d Cir.1990). A mark acquires secondary meaning when “the name and the business have become synonymous in the mind of the public, submerging the primary meaning of the term in favor of its meaning as a word identifying that business.” *Pirone v. MacMillan, Inc.*, 894 F.2d 579, 583 (2d Cir.1990) (internal quotation omitted). The court must determine, in other words, whether the public associates **Chum's** “Fashion Television” marks with its program in particular or, rather, with the entire genre of fashion-related television programming in general.

Six factors are relevant in evaluating whether a plaintiff's mark has acquired secondary meaning: (1) advertising expenditures; (2) consumer studies linking the mark to a source; (3) unsolicited media coverage

of the product; (4) sales success; (5) attempts to plagiarize the mark; and (6) length and exclusivity of the mark's use. See *Centaur Communications v. A/S/M Communications*, 830 F.2d 1217, 1222 (2d Cir.1987); see also *Genesee Brewing*, 124 F.3d at 143 n. 4, 150 n. 16. Although “no single factor is determinative” and “every element need not be proved,” establishing secondary meaning entails meeting “vigorous evidentiary requirements,” with **Chum** bearing the burden of demonstrating that its “Fashion Television” marks acquired secondary meaning before defendants' channel was introduced in the United States in 1998. *Thompson Med. Co. v. Pfizer, Inc.*, 753 F.2d 208, 217 (2d Cir.1985). The court will address each factor in turn.

#### **1. Advertising Expenditures**

**Chum** presented copious evidence that over the years it often placed prominent (quarter to full-page) advertisements for its program in leading broadcast journals, such as *Variety*, *Electronic Media International*, \*534 *Television Business International*, and *Broadcasting and Cable International*. PX–35; PX–45; PX–46; PX–122; Tapp Tr. 240:15–256:2. Although there is relatively little evidence in the record about how much money **Chum** spent on such advertising—until recently it was not **Chum's** policy to track such expenditures, Cooper Tr. 680:16–681:24—the court has no trouble believing that the expenditures were substantial. PX–36. **Chum** also routinely attended important broadcast industry trade shows, such as the annual National Association of Television Programming Executives conference. PX–119; PX–126; PX–127.

Importantly, however, the record is almost entirely barren with respect to the extent to which **Chum** advertised its program to the viewing public. Other than a lone advertisement it took out in *Women's Wear Daily*, PX–36, **Chum** has not pointed to any advertising it has done in periodicals appealing to people other than those in the broadcast and advertising businesses. To be sure, two **Chum** witnesses testified

198 F.Supp.2d 530, 63 U.S.P.Q.2d 1569  
(Cite as: 198 F.Supp.2d 530)

that the VH-1, E!, and Style networks sometimes ran on-air promotions for “FT–Fashion Television,” but neither witness made any attempt to quantify the frequency of such promotions or the size of the audience they reached. Tapp Tr. 238:5–239:7; Helmrich Tr. 393:3–12.<sup>FN2</sup> Although it is certainly relevant that **Chum** spent substantial sums of money promoting its program to industry executives, the court finds it at least equally relevant that **Chum** has not adequately demonstrated it spent much, if anything at all, attempting to promote its program directly to the viewing public.

FN2. Similarly, two **Chum** witnesses testified that **Chum** promotes its program on its website, but neither spoke to the nature or size of the website's audience. Tapp Tr. 259:13–25; Levine Tr. 493:14–494:3, 537:5–540:8.

**Chum** also points to the fact that Marcia Martin, the senior producer of its program, was named an “International Marketing Superstar” in 1993 by *Advertising Age International*, an advertising trade journal. PX–18. The court does not give this fact much weight for two reasons: (1) the journal—which expressly “focuse[d] on executives whose work is concentrated outside the U.S.”—clearly was impressed primarily with the way **Chum's** program had been marketed in Canada, not the United States; and (2) because the award was given in 1993 it sheds no direct light on the extent to which the program was advertised for the bulk of the period at issue—1991 (when **Chum's** program was introduced in the United States) through 1998 (when defendants' channel was introduced in the United States).

Because **Chum** engaged in substantial advertising of its program only to people within the industry and not to members of the viewing public, the court finds that this factor weighs against a finding of secondary meaning.

## 2. Consumer Surveys

**Chum** chose not to conduct—or at least chose not to offer into evidence—any consumer surveys measuring the extent to which consumers associate its “Fashion Television” marks with its program. Although the court is well aware that a plaintiff need not prove each and every secondary meaning factor in order to prevail, the court finds it quite significant that **Chum**, a very large and financially able media corporation, did not muster any survey evidence demonstrating the requisite link in the minds of consumers between **Chum's** marks and its program. *Cf. Information Clearing House, Inc. v. Find Magazine*, 492 F.Supp. 147, 160 (S.D.N.Y.1980) \*535 (observing, in the likelihood of confusion context, that “[i]t is also significant that plaintiff, although possessed of the financial means, did not undertake a survey of public consumer reaction”). This factor weighs heavily against a finding of secondary meaning.

## 3. Unsolicited Media Coverage

**Chum's** program received considerable media coverage in the United States between 1991 and 1998, including features in a host of newspapers, general interest magazines, and trade journals. PX–10; PX–12; PX–14; PX–15; PX–16; PX–19; PX–20; PX–21; PX–22; PX–23; PX–24; PX–25; PX–27; PX–29; PX–31. Although the court believes that **Chum's** able public relations department had a behind-the-scenes hand in some of this coverage, the court finds that the unsolicited portion of the media's coverage of “FT–Fashion Television” has been substantial.

Additionally, the court finds that the program's longtime host, Jeanne Beker, has made numerous appearances on other television programs such as “Entertainment Tonight” and “Inside Edition,” and that during such appearances she is always introduced as the host of “FT–Fashion Television.” PX–31; Martin Tr. 82:17–84:19.

198 F.Supp.2d 530, 63 U.S.P.Q.2d 1569  
(Cite as: 198 F.Supp.2d 530)

In light of this evidence, the court finds that this factor weighs in favor of a finding of secondary meaning.

#### 4. *Sales Success*

There is no question that **Chum's** program has enjoyed a fair measure of success since it was introduced in the United States in 1991. After all, “FT–Fashion Television” aired on VH–1 from 1992 through 1999, during which time that network reached at least 44 million homes in the United States. PX–17; Martin Tr. 54:6–13, 55:8–10; Tapp Tr. 232:17–20. Since 1999, the program has aired on the E! network, which reaches approximately 45 million homes in the United States. Martin Tr. 60:5–10. The program also currently airs on the Style network. Helmrich Tr. 392:9–21.

Importantly, however, **Chum** presented no real evidence regarding how many United States viewers *actually watch* its program. It is one thing to say that a program runs on a network that is carried in millions of homes—that is, on a network to which millions of viewers *have access*. But such figures do not speak directly, if at all, to the number of viewers who take advantage of such access by actually watching the program. There is no question that **Chum** possesses detailed ratings information measuring its United States viewership. The court cannot fathom why **Chum** chose not to introduce such ratings information into the record, especially given its obvious importance to the secondary meaning inquiry. Nor did **Chum** present any real evidence regarding the revenues generated by “FT–Fashion Television” in the United States. To be sure, **Chum** presented bits of anecdotal evidence that its program was one of VH–1's “highest rated” programs and that its United States revenues have been “very significant” and that it is “well known in the trade.” Znaimer Dep. 111:14–21; Tapp. Tr. 233:16–19; Chabin Dep. 12:20–23; Helmrich Tr. 384:1–12.<sup>FN3</sup> Still, the dearth of hard numbers in the record—especially given that

**Chum** undoubtedly has such numbers at its fingertips—is glaring.

FN3. **Chum** also presented evidence that its program is “the most successful Canadian programming product in [that] country's history.” PX–17. However, this achievement says nothing about the program's presence *in the United States*—the only market at issue in this case.

\*536 Again, the court has no trouble finding that **Chum's** program enjoys a fair measure of success and that it has reached a substantial number of viewers in the United States. Because **Chum** chose not to be more specific in its evidentiary presentation, however, the court finds that this factor weighs at most weakly in favor of a finding of secondary meaning.

#### 5. *Attempts to Plagiarize*

One **Chum** witness testified, and the court finds, that at some unspecified point in time a company sought to produce a television program called “Fashion Network Television” using a logo similar to **Chum's**, and that after **Chum** protested such use through its attorneys the company chose to change the name of its program. Martin Tr. 88:4–23. Other than this isolated instance, however, the court finds that competitors have not attempted to plagiarize **Chum's** “Fashion Television” marks.

Given that no more than one competitor has attempted to use a mark similar to **Chum's**, the court finds that this factor weighs against a finding of secondary meaning.

#### 6. *Length and Exclusivity of Use*

The court finds that **Chum** was the first to use its “Fashion Television” marks in the United States, and that the phrase “Fashion Television” had not been used as the title of a program or the name of a channel prior to **Chum's** expansion into the United States.

198 F.Supp.2d 530, 63 U.S.P.Q.2d 1569  
(Cite as: 198 F.Supp.2d 530)

Martin Tr. 87:17–20; Znaimer Dep. 92:8–25. Other television programs in the fashion genre use different names, such as “Style with Elsa Klansch,” “House of Style,” “Fashion Emergency,” “Fashion File,” and “Behind the Velvet Rope.” PX–12; Martin Tr. 89:14–20, 125:25–126:24; Helmrich Tr. 427:23–428:11.

Accordingly, the court finds that this factor weighs in favor of a finding of secondary meaning.

### 7. Weighing the Six Factors

It is ultimately a close question whether **Chum's** “Fashion Television” marks have acquired secondary meaning. Three of the factors—unsolicited media coverage, sales success, and length and exclusivity of use—weigh in **Chum's** favor, although the sales success factor does not weigh strongly so. Three factors—advertising expenditures, consumer surveys, and attempts to plagiarize—weigh against a finding of secondary meaning, with the consumer surveys factor weighing strongly against such a finding.

In the final analysis, the court is most persuaded by the evidence it has not seen: direct survey evidence that consumers associate **Chum's** marks with its program, or hard evidence with respect to the size of the program's United States viewership. In light of these key omissions, the court cannot say that **Chum** has met its burden of demonstrating by a preponderance of the evidence that its “Fashion Television” marks have acquired secondary meaning. Accordingly, the court holds that they have not.

### C. Likelihood of Confusion

[2] Although **Chum's** failure to establish secondary meaning is fatal to its unfair competition claims, the court also holds in the alternative that **Chum** has not proven the requisite likelihood of confusion. In addressing likelihood of confusion, the court must apply the eight factors set forth by Judge Friendly in *Polaroid Corp. v. Polarad Electronics*

*Corp.*, 287 F.2d 492, 495 (2d Cir.1961):(1) the strength of plaintiff's mark; (2) the similarity of the parties' marks; (3) the proximity of the parties' products in the marketplace; (4) the \*537 likelihood that the plaintiff will bridge the gap between the products; (5) actual confusion; (6) the defendant's intent in adopting its mark; (7) the quality of the defendant's product; and (8) the sophistication of the relevant consumer group. See *Nabisco, Inc. v. Warner-Lambert Co.*, 220 F.3d 43, 46 (2d. Cir.2000).

The Second Circuit has repeatedly instructed that “[t]he *Polaroid* analysis is not a mechanical measurement.” *Nora Beverages, Inc. v. Perrier Group of Am., Inc.*, 269 F.3d 114, 119 (2d Cir.2001). When conducting a *Polaroid* analysis, “a court should focus on the ultimate question of whether consumers are likely to be confused.” *Paddington Corp. v. Attiki Imps. & Distribs., Inc.*, 996 F.2d 577, 584 (2d Cir.1993). In making this determination, a court looks to the totality of the product. See *Bristol-Myers Squibb Co. v. McNeil-P.P.C., Inc.*, 973 F.2d 1033, 1042 (2d Cir.1992). Although no one factor is necessarily dispositive, any one factor may prove to be so. See *Nabisco*, 220 F.3d at 46. The test “is not whether confusion is possible,” nor is it “whether confusion is probable among customers who are not knowledgeable.” *Estee Lauder Inc. v. Gap, Inc.*, 108 F.3d 1503, 1511 (2d Cir.1997). Rather, the test “is whether confusion is probable among numerous consumers who are ordinarily prudent.” *Id.*

The court will address each *Polaroid* factor in turn.

#### 1. The Strength of Plaintiff's Mark

The Second Circuit has instructed that a mark's strength must be measured in two ways: (1) by inherent strength, resulting from the mark's degree of inherent distinctiveness; and (2) by acquired strength, reflecting the degree of consumer recognition the mark has achieved. See *TCPIP Holding Co. v. Haar Communications Inc.*, 244 F.3d 88, 100 (2d Cir.2001);

198 F.Supp.2d 530, 63 U.S.P.Q.2d 1569

(Cite as: 198 F.Supp.2d 530)

see also *Paddington Corp. v. Attiki Importers & Distribs., Inc.*, 996 F.2d 577, 585 (2d Cir.1993).

Judge Wood previously found that **Chum's** "Fashion Television" marks are generic—the least distinctive category into which a mark can fall. See *Forschner*, 30 F.3d at 353 (reiterating that marks are categorized, in ascending degree of distinctiveness, as generic, descriptive, suggestive, or arbitrary). As discussed in the previous section, moreover, **Chum** failed to prove that its marks have achieved secondary meaning in the marketplace.

Because **Chum's** marks are not inherently distinctive, and because they have not acquired secondary meaning among consumers, the court finds that this factor weighs decidedly against a finding of likelihood of confusion.

## 2. The Similarity of the Marks

There is no question that plaintiff's "Fashion Television" and defendants' "Fashion TV" marks are, for the most part, similar. See *Morningside Group Ltd. v. Morningside Capital Group, L.L.C.*, 182 F.3d 133, 140 (2d Cir.1999) (reversing as clearly erroneous district court's finding that the marks "The Morningside Group Limited" and "Morningside Capital Group, L.L.C." were not similar). The fact that **Chum** sometimes uses the tag line "The Original. The Best." and defendants sometimes use the mark "F. L'Original" only reinforces this conclusion. Indeed, **Lisowski** himself admitted candidly during his deposition that it is a "foregone conclusion" that the marks "look [ ] similar." **Lisowski** Dep. 91:12–16.

Defendants argue that the marks at issue should not be deemed similar because their logo is different than **Chum's**. Defendants are correct that the parties use different logos and that defendants' logo, \*538 which consists of a rather distinctive lower case "f" encapsulated in a diamond, usually is displayed in the upper left hand corner of their channel and website.

DX–T; Lemmel Tr. 618:24–619:13; PX–77; DX–K444. In this context, however, the court finds that the differences between the parties' logos are not particularly important because television viewers obviously are significantly more likely to associate a show or channel with its name rather than with its logo. Television programming guides, for example, do not reproduce the logo of a program or channel in their listings. PX–32.

Defendants also point to the fact that they often add the word "Paris" to the end of their "Fashion TV" mark as a geographic modifier. This gesture does little to set defendants' marks apart, however, because television channels often refer to their international affiliates simply by adding such geographic modifiers to their regular marks. Tapp Tr. 318:2–321:9 (discussing, for example, "MTV Asia"). For this reason, the mark "Fashion TV Paris" cannot be said to be dissimilar to the mark "Fashion Television" simply by virtue of the addition of the word "Paris." FN4

FN4. It is not significant that **Chum** uses "Television" while defendants use "TV," because "TV" obviously is a common abbreviation of "Television." **Chabin** Dep. 16:6–17:21.

Though **Chum's** and defendants' marks are by no means identical, the court finds that in view of the totality of the circumstances this factor weighs in favor of a finding of likelihood of confusion.

## 3. The Proximity of the Products in the Marketplace

This factor concerns whether and to what extent the two products compete with each other. It is certainly true—and **Lisowski** himself readily admitted—that there is some overlap between the audiences that **Chum** and defendants are seeking to court. **Lisowski** Tr. 94:1–17. Both sides, after all, are attempting to attract viewers interested in television programming related to fashion.

198 F.Supp.2d 530, 63 U.S.P.Q.2d 1569  
(Cite as: 198 F.Supp.2d 530)

Applying simple common sense, however, the court finds that the similarities between the parties' respective intended audiences are outweighed by their differences. **Chum's** program is all about *journalism*. It consists of segments in which reporters seek to educate audience members about a given topic relating to fashion, art, or architecture. The content aired on defendants' channel, on the other hand, is all about *voyeurism*. Defendants' viewers are not seeking to learn anything substantive about the fashion industry, art, or architecture, but rather simply want to watch pretty models strolling down the runway wearing cutting-edge clothing with pulsing music blaring in the background—over and over and over again. The court simply does not believe that a significant number of defendants' viewers have any desire whatsoever to learn, for example, the details of actor Anthony Quinn's latest artistic pursuits. PX-9 (videotape of the January 16, 1999 episode of FT-Fashion Television containing, among other things, an interview with Anthony Quinn about his paintings and sculptures). Because **Chum** has not offered evidence demonstrating that there actually is significant overlap between its and defendants' audiences, the court finds any possible overlap insubstantial.

Perhaps more importantly, **Chum's** product is a single television show, whereas defendants' product is an entire television channel. This distinction is critical because television viewers undoubtedly understand the distinction between the individual programs aired on a channel versus the channel itself. This is not to say that \*539 it is impossible that someone tuning into "Fashion TV Paris" the channel could be confused about whether the channel is affiliated with "FT-Fashion Television" the program. Rather, the point is that this additional lack of proximity between **Chum's** program and defendants' channel makes it less likely that viewers will be confused than if both parties produced a program or both parties operated an entire channel.

Because there is no significant overlap between the audiences of "FT-Fashion Television" and "Fashion TV Paris," and because **Chum's** product is a program whereas defendants' product is an entire channel, the court finds that the proximity factor weighs heavily against a finding of likelihood of confusion.

#### 4. *Bridging the Gap*

This factor involves whether **Chum** is likely to enter defendants' market, recognizing "the senior user's interest in preserving avenues of expansion and entering into related fields." *Morningside*, 182 F.3d at 141 (internal quotation omitted). Judge Wood held that **Chum** is not entitled to "bridge the gap" because its mark is generic. *See Chum*, 2001 WL 243541 at \*11 (citing *Forschner*, 904 F.Supp. at 1420-23). **Chum** correctly observes, however, that the portion of the *Forschner* opinion Judge Wood cited does not directly support this proposition, nor is this court aware of any other cases that have so held. Out of an abundance of caution, therefore, the court will assume for purposes of deciding this case that **Chum** is entitled to rely on "bridging the gap" in order to demonstrate likelihood of confusion.

**Chum** presented evidence demonstrating that it hopes to launch a 24-hour fashion channel in the United States in the relatively near future. Martin Tr. 92:19-25. Indeed, **Chum** recently launched a 24-hour channel called "Fashion Television the Channel" in Canada. Martin Tr. 90:15-92:21; Levine Tr. 542:11-544:5. However, the programming **Chum** envisions airing on its contemplated 24-hour fashion channel in the United States will be similar to "FT-Fashion Television"—that is, actual magazine-style reporting on fashion-related events, not mere "video wallpaper" of models continuously walking down runways. As such, **Chum's** plans for the future may well bridge the gap attributable to the fact that its product is a program while defendants' product is an entire channel, but **Chum** has presented no evidence that it has any plans to bridge the gap that

198 F.Supp.2d 530, 63 U.S.P.Q.2d 1569

(Cite as: 198 F.Supp.2d 530)

exists with respect to the very different *nature* of the parties' programming.

Because **Chum** plans to expand its program into a channel that, like defendants', airs 24 hours a day, but because **Chum** does not plan to broadcast on its channel any programming that compares with defendants', the court concludes that this factor weighs at most weakly in favor of a finding of likelihood of confusion.

### 5. Actual Confusion

"Evidence that confusion has actually occurred is of course convincing evidence that confusion is likely to occur." *Morningside*, 182 F.3d at 141. At trial, **Chum** presented copious evidence of actual confusion among industry professionals. **Chum's** representatives have been denied access to fashion presentations because officials mistakenly thought they worked for defendants; trade show attendees have mistakenly thought that promotional materials distributed by defendants actually came from **Chum**; and the designers and fashion house executives **Chum** seeks to interview often become confused about whether it is **Chum** that is seeking to \*540 interview them or defendants—to name just a few examples.

Importantly, however, **Chum** presented no evidence at all that any *consumers* have ever had so much as a moment of confusion with respect to **Chum's** program and defendants' channel. Nor would the court expect such evidence to exist. As the court has discussed previously, after all, the parties' marks themselves may be confusingly similar, but the actual content of the parties' programming is markedly different. Therefore, while the court has no trouble at all believing that people who hear that "Fashion TV" is at the door might mistakenly believe that "Fashion Television" is at the door, the court does not believe—and **Chum** has presented no evidence whatsoever demonstrating—that anybody *actually watching* defendants' channel would be at all likely to think that they are watching **Chum's** program (or vice versa).

This is not to say that the evidence of confusion among industry professionals presented by **Chum** is irrelevant. But it is once again at least equally relevant that there is no evidence at all of actual confusion among viewers.

Because **Chum** demonstrated actual confusion among industry professionals flowing from the similarity of the parties' names but failed to demonstrate any confusion among viewers actually watching the programs, the court finds that this factor weighs against a finding of likelihood of confusion.

### 6. Defendants' Intent

This factor explores whether defendants adopted their marks "with the intention of capitalizing on ... plaintiff's reputation and any confusion between [defendants'] and the senior user's product." *Cadbury Beverages, Inc. v. Cott Corp.*, 73 F.3d 474, 482–83 (2d Cir.1996) (internal quotation omitted).

Defendants presented evidence, and the court believes, that they adopted their "Fashion TV" marks primarily for the simple reason that their product is a TV channel involving fashion. *Lisowski Tr.* 24:18–25. *See Morningside*, 182 F.3d at 142 (finding good faith because defendant "Morningside Capital" was located on Morningside Drive). The court also notes that defendants properly registered their "Fashion TV" marks with the French trademark authorities prior to launching their channel in the United States. DX-CCCCC; DX-DDDDD; DX-EEEEEE.

To be sure, defendants did not do a United States trademark search before launching their channel here. *Lemmel Tr.* 625:12–22. However, given that **Chum's** generic marks are not registered trademarks and are not protectable under United States trademark infringement and trademark dilution laws, it is not clear what a good faith actor seeking to use the name "Fashion TV" in the United States would have done upon discovering **Chum's** use of its generic "Fashion

198 F.Supp.2d 530, 63 U.S.P.Q.2d 1569  
(Cite as: 198 F.Supp.2d 530)

Television” marks. Indeed, this essentially is the central question posed by this litigation. For this reason, the court cannot say that defendants' failure to conduct a United States trademark search demonstrates their bad faith.

The court finds that defendants adopted their marks primarily because they were the best marks for their product, not in order to capitalize on **Chum's** reputation. Accordingly, this factor weighs against **Chum's** unfair competition claims.

#### 7. The Quality of Defendants' Product

Under this factor the court must first examine whether defendants' product is “inferior to plaintiff's, thereby tarnishing plaintiff's reputation if consumers confuse \*541 the two.” *Morningside*, 182 F.3d at 142. The quality of the programming on defendants' channel unquestionably is vastly inferior to the quality of **Chum's** program. Whereas **Chum's** program features actual reporting on topics relating to fashion, art, and architecture, defendants' channel broadcasts nothing but scantily clad models walking down runways to the beat of club music. Indeed, defendants' own witness testified that United States cable operators are hesitant to carry their channel because of its low production quality, frontal nudity, and overall prurient nature. *Rosenberger Tr.* 706:10–15; 714:25–717:1. Thus, to the extent that consumers become confused between the two products, there is a very grave risk that **Chum's** reputation will be tarnished.

As the Second Circuit has recognized, however, “this factor cuts both ways.” *Morningside*, 182 F.3d at 142. Just as “[p]roducts of equal quality may tend to create confusion as to source because of that very similarity in quality,” *id.*, so too can marked differences in quality ensure that there will be no confusion in the first place. This case presents a perfect example. The quality of **Chum's** program is so much higher than the “video wallpaper” broadcast by defendants that it is hard to imagine that any viewer watching

defendants' channel might mistakenly believe he or she was watching **Chum's** program. Therefore, although the low quality of defendants' channel cuts in **Chum's** favor in the first instance, in an important sense this lack of proximity between the parties' products cuts against a finding of likelihood of confusion.

Accordingly, the court finds that this factor is neutral.

#### 8. The Sophistication of the Relevant Consumer Group

This factor is “grounded in the belief that unsophisticated consumers aggravate the likelihood of confusion.” *Hasbro, Inc. v. Lanard Toys, Ltd.*, 858 F.2d 70, 78–79 (2d Cir.1988). As discussed above, all of **Chum's** actual confusion evidence involved anecdotes of confusion among industry professionals, not ordinary consumers, and it goes without saying that these industry professionals are highly sophisticated actors. And while there undoubtedly is a spectrum of sophistication among the parties' viewers, the court finds that the average consumer is sophisticated enough to understand, at a minimum, the difference between a television program and a television channel. To the extent that there are other ways in which consumer sophistication is relevant to the likelihood of confusion inquiry, the court notes only that **Chum** has presented no evidence addressing them.

Accordingly, the court finds that this factor weighs against a finding of likelihood of confusion.

#### 9. Weighing the Polaroid Factors

Five of the factors—the strength of plaintiff's mark, the proximity of the parties' products in the marketplace, actual confusion, defendants' intent in adopting their mark, and the sophistication of the relevant consumer group—weigh against **Chum**, the first two strongly so. Two of the factors—the similarity of the parties' marks and bridging the gap—favor

198 F.Supp.2d 530, 63 U.S.P.Q.2d 1569  
(Cite as: 198 F.Supp.2d 530)

**Chum**, although the latter only weakly so. The quality factor is neutral.

Weighing all of the factors together, the court has no trouble concluding that **Chum** has not adequately demonstrated the requisite likelihood of confusion. The court finds the most significance in the very salient difference between the nature of the parties' products. Viewing the evidence as a whole, the court simply does not accept that the ordinary consumer \*542 watching defendants' channel likely would believe that he or she actually is watching **Chum's** program. **Chum's** unfair competition claims therefore must fail.<sup>FN5</sup>

FN5. Additionally, the court notes that even if **Chum** were to prevail on its unfair competition claims it still would not be entitled to the relief it seeks—enjoining defendants from using any of their “Fashion TV” marks to identify their channel in the United States. See Plaintiff's Proposed Findings of Fact and Conclusions of Law ¶ 123. The Second Circuit has instructed that “[w]here a generic mark is involved, the relief granted should only go so far as to alleviate the source confusion ... and no further.” *Genesee Brewing*, 124 F.3d at 151 (internal quotation omitted). A court may require the newcomer “to distinguish its product or to notify consumers explicitly that its product does not come from the original manufacturer” or otherwise “ ‘to use every reasonable means to prevent confusion,’ ” but a court “*may not prevent the defendant from using the plaintiff's mark altogether.*” *Id.* (quoting *Kellogg Co. v. Nat'l Biscuit Co.*, 305 U.S. 111, 121, 59 S.Ct. 109, 83 L.Ed. 73 (1938)) (emphasis added).

### CONCLUSION

For the foregoing reasons, the court concludes that **Chum's** “Fashion Television” marks have not acquired secondary meaning. In the alternative, the

court concludes that **Chum** has not adequately demonstrated that there is a likelihood of confusion. Accordingly, the court enters judgment in favor of defendants on **Chum's** unfair competition claims.

SO ORDERED.

S.D.N.Y., 2002.  
Chum Ltd. v. Lisowski  
198 F.Supp.2d 530, 63 U.S.P.Q.2d 1569

END OF DOCUMENT

**Full docket text for document 89:**

JUDGMENT, that for the reasons stated in the Court's Opinion (86852) dated 4/18/02, judgment is entered in favor of depts on plntf's unfair competition claims (signed by James M. Parkison, Clerk of Court); Mailed copies and notice of right to appeal. Entered On Docket: 4/24/02. (cd)

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About Us

Approach

Team

Contact



Michael Gleissner, Partner

Asia-based media and business entrepreneur Michael Gleissner started his professional career in the telecommunications technology industry in Germany. He pioneered e-commerce with Europe's first online bookstore "telebook", developed web hosting (with one of Germany's leading web hosting service), as well as business process outsourcing with a contact center in Namibia, Africa, which served as the German-language customer service operation for his companies.

He relocated to the US in 1996 where he focused on international liaising in his businesses. After serving in several high profile positions as senior executives in technology companies, including vice-president at Amazon.com (which acquired one of his companies in 1998), he retired from active operational duties and has been focused on managing his investments through a New York-based investment operations.

He acquired Bigfoot in 2000 which now serves as the binding entity for various investments and operational activities.

Currently based out of Hong Kong and Singapore, he recently focused on entertainment ventures with the launch of Hong Kong-based, Bigfoot Entertainment, and the large production facility and film school in Cebu, Philippines.



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Bell Media Inc.  
Attn. Kevin Assaff  
9 Channel Nine Court  
Scarborough, Ontario  
Canada M15 4B5

October 10, 2014

Letter of Intent - Licensing of the  
Brand Assets of the Channel "Fashion Television"

Dear Mr. Assaff,

This letter of shall serve as a binding expression of interest of Bigfoot Entertainment Inc., a California corporation with limited liability ("Bigfoot") to enter into a license agreement with Bell Media Inc., a corporation established under the laws of Canada ("Bell"):

**LICENSED PROPERTY.** Bell's rights to the brand, logo, likeness, and trademarks as listed in Exhibit A (collectively the "Brand") of the channel "Fashion Television" for worldwide use with the exception of Canada, on an as-is basis.

**TERM AND LICENSE FEE.** 4 years starting Jan. 1, 2014.

Bigfoot to make following payments:

Period	License Fee
Jan. 1, 2014 - Dec. 31, 2015	\$1,500,000.00
Jan. 1, 2016 - Dec. 31, 2016	\$1,250,000.00
Jan. 1, 2017 - Dec. 31, 2017	\$1,250,000.00

...

www.bigfoot.com



Page - 2 - of our Letter of Intent to Bell Media Inc.

**ADJUSTMENTS.** The license fee for the years 2016 and 2017 (on a going forward basis from the date of the final resolution if such date occurs after December 31, 2015) will be discounted by up to 50% in case the pending cancellation proceedings of the European Union Trademarks which are ongoing as of the date hereof are resolved against Bell with finality.

**PAYMENT SCHEDULE.** Provided that no adjustments are to be made, Bigfoot shall make payments according to the following schedule:

Due Date	Payment
Execution of this Letter	\$1,000,000.00
Oct 1, 2015	\$500,000.00
Jan. 2, 2016	\$312,500.00
April 1, 2016	\$312,500.00
July 1, 2016	\$312,500.00
Oct. 1, 2016	\$312,500.00
Jan. 2, 2017	\$312,500.00
April 1, 2017	\$312,500.00
July 1, 2017	\$312,500.00
Oct. 1, 2017	\$312,500.00

Bell will invoice payments when due, and Bigfoot will make payments via wire transfer to the bank account designated by Bell.

**RIGHTS AND OBLIGATIONS OF BIGFOOT.** Bigfoot will establish an entity using the brand "Fashion Television", and this entity will be entitled to defend current brand assets such as trademarks etc. All legal action shall be at the sole discretion and expense of Bigfoot. Bell retains the right and discretion to defend any brand asset(s) which Bigfoot elects not to defend. Subject to Bell's written approval in each instance, Bigfoot is authorized to sublicense the marks provided that the sublicensing period does not exceed the license period under this agreement and that the sublicensing is not in respect of Canada.

**RIGHTS AND OBLIGATIONS OF BELL.** Bell will provide Power of Attorney to IP counsel designated by Bigfoot to maintain the marks and extend the marks upon expiration, as well as to defend any hostile action against the marks, and allow Bigfoot to file, on behalf of Bell, new marks to protect the validity of their trademark portfolio. Bell will also provide evidence that is in Bell's possession for the purpose of rectifying any outdated mark owner information or otherwise needed within the cancellation proceedings to prove use (especially web and YouTube statistics, to the extent available).

**WEBSITE.** Bigfoot will in coordination with Bell manage the website [www.fashiontelevision.com](http://www.fashiontelevision.com) and will maintain the site and social media



Page - 3 - of our Letter of Intent to Bell Media Inc.

accounts related to "Fashion Television". Without limitation, such coordination shall be such that persons accessing the website from within Canada receive program listings and other content that is relevant in the context of the Canadian channel.

**PURCHASE OPTION.** At the conclusion of the license period, Bigfoot shall have an option to purchase the Brand for \$1,000,000.00.

The option needs to be exercised and, if exercised, paid, by Dec. 31, 2017, and Bigfoot shall grant a perpetual royalty-free license to the Brand for the territory of Canada to Bell.

**THIRD PARTY CLAIMS.** Bigfoot shall defend, indemnify and hold harmless Bell from and against any and all third party claims arising from the exercise of the rights granted hereunder.

**CLOSING.** Upon execution of this letter, per the payment schedule above, Bigfoot shall be depositing the amount of \$1,000,000.00 via wire transfer, representing the first downpayment on the license fee for the first period, into a bank account designated by Bell.

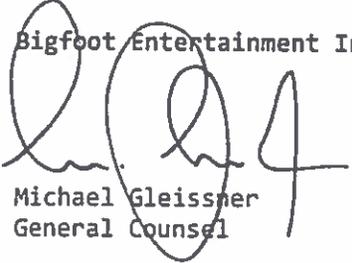
**FURTHER ASSURANCES.** The parties shall do, execute and deliver, or cause to be done, executed and delivered, such further acts and documents as may be reasonably required to give effect to this letter or to carry out the intention or facilitate the performance hereof.

**MISCELLANEOUS.** All amounts stated in this letter are in United States Dollars. This agreement shall be governed by the laws of Canada, and all disputes that cannot be amicably resolved shall be subject to arbitration governed by the rules of the Canadian Arbitration Association.

If the terms and conditions above are acceptable to you, please return a signed copy of this letter to the attention of the undersigned before October 15, 2014, upon which this offer is deemed to have expired.

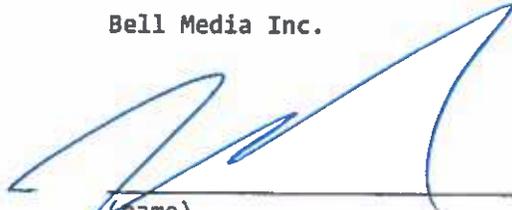
Best regards,

Bigfoot Entertainment Inc.

  
Michael Gleissner  
General Counsel

Accepted and Agreed:

Bell Media Inc.

  
(name) KEVIN ASCAFF

Date  
2014. 10. 15



Exhibit A:

## List of Trademarks

Country/Territory	Reg. No.	Class	App. Date	Holder
Australia	763598	38,41	1999	CTV LIMITED
China	1327466	38	1999	CTV LIMITED
China	1327493	41	1999	CTV LIMITED
Colombia	99018933	41	1999	CTV LIMITED
Colombia	99018934	38	1999	CTV LIMITED
European Union (CTM)	599829	25,38,41	11-Aug-1997	Bell Media Inc.
European Union (CTM)	776823	25,38,41	23-Mar-1998	Bell Media Inc.
European Union (CTM)	776864	25,38,41	23-Mar-1998	Bell Media Inc.
Egypt	120807	38	2006	CHUM
Egypt	120808	41	2004	CHUM
Hong Kong	9807234	42	1999	CTV LIMITED
Iceland	99000318	38,41	1999	CTV LIMITED
India	805679	25	2007	CHUM
Indonesia	16398	38	1998	CTV LIMITED
Indonesia	16399	41	1998	CTV LIMITED
Israel	124783	38	1999	CHUM
Israel	124784	41	1999	CHUM
Japan	10044658	41	2000	CTV LIMITED
Malaysia	98010424	38	2002	CHUM
Malaysia	98010425	41	2002	CHUM
Morocco	68451	38,41	15-Jan-1999	CTV Limited
New Zealand	B303565	38	2000	CTV LIMITED
New Zealand	B303566	41	2000	CTV LIMITED
Saudi Arabia	99188076	38	2000	CTV LIMITED
Saudi Arabia	99188103	41	2000	CTV LIMITED
Singapore	T98009289B	38	15-Jan-1999	CTV LIMITED
Singapore	T98009290F	41	15-Jan-1999	CTV LIMITED
Slovenia	9871831	38,41	28-Dec-1998	CHUM
South Africa	98012732	38	2001	CHUM
South Africa	98012733	41	2001	CHUM
Tangier / Algeria	015008	38,41	2001	CHUM
United States	2945407	38,41	17-Apr-1996	Bell Media Inc.



**CERTIFICATE OF INCORPORATION  
OF A  
PRIVATE LIMITED COMPANY**

Company Number **9254205**

The Registrar of Companies for England and Wales, hereby certifies that

**FASHION TELEVISION INTERNATIONAL LIMITED**

is this day incorporated under the Companies Act 2006 as a private company, that the company is limited by shares, and the situation of its registered office is in England and Wales

Given at Companies House, Cardiff, on **8th October 2014**



\*N09254205E\*

The above information was communicated by electronic means and authenticated by the Registrar of Companies under section 1115 of the Companies Act 2006



Companies House



THE OFFICIAL SEAL OF THE  
REGISTRAR OF COMPANIES



**IN01(e)**

Companies House

**Application to register a company**

*Received for filing in Electronic Format on the: 07/10/2014*



X3I0TEMX

*Company Name  
in full:* **FASHION TELEVISION INTERNATIONAL LIMITED**

*Company Type:* **Private limited by shares**

*Situation of Registered  
Office:* **England and Wales**

*Proposed Register  
Office Address:* **20-22 WENLOCK ROAD  
LONDON  
ENGLAND  
N1 7GU**

*I wish to entirely adopt the following model articles:* **Private (Ltd by Shares)**

*Type:* **Person**  
*Full forename(s):* **MR RALPH**

*Surname:* **SIEBENALER**

*Former names:*

*Service Address:* **20-22 WENLOCK ROAD  
LONDON  
ENGLAND  
N1 7GU**

*Country/State Usually Resident:* **UNITED KINGDOM**

*Date of Birth:* **23/11/1976**                      *Nationality:* **LUXEMBOURGER**

*Occupation:* **BUSINESSMAN**

*Consented to Act:* **Y**                      *Date authorised:* **08/10/2014**                      *Authenticated:* **YES**

# Statement of Capital (Share Capital)

<b>Class of shares</b>	<b>ORD</b>	<i>Number allotted</i>	<b>1</b>
		<i>Aggregate nominal value</i>	<b>1</b>
<i>Currency</i>	<b>GBP</b>	<i>Amount paid per share</i>	<b>1</b>
		<i>Amount unpaid per share</i>	<b>0</b>

## *Prescribed particulars*

ONE SHARE EQUALS ONE VOTE, EACH HAVING RIGHTS TO DIVIDENDS. SO LONG AS THERE ARE NO RIGHTS ATTACHED TO SHARES ON WINDING-UP ETC OR REDEMPTION RIGHTS.

---

## Statement of Capital (Totals)

---

<i>Currency</i>	<b>GBP</b>	<i>Total number of shares</i>	<b>1</b>
		<i>Total aggregate nominal value</i>	<b>1</b>

*Name:* BIGFOOT ENTERTAINMENT INC.

*Address:* 246 WEST BROADWAY  
NEW YORK  
NEW YORK  
USA  
10013

*Class of share:* ORD

*Number of shares:* 1

*Currency:* GBP

*Nominal value of  
each share:* 1

*Amount unpaid:* 0

*Amount paid:* 1

*I confirm the requirements of the Companies Act 2006 as to registration have been complied with.*

*memorandum delivered by an agent for the subscriber(s):* Yes

*Agent's Name:* COMPANIES MADE SIMPLE LTD

*Agent's Address:* 145 - 157 ST. JOHN STREET  
LONDON  
ENGLAND  
EC1V 4PY

---

*Authorisation*

*Authoriser Designation:* agent

*Authenticated:* Yes

*Agent's Name:* COMPANIES MADE SIMPLE LTD

*Agent's Address:* 145 - 157 ST. JOHN STREET  
LONDON  
ENGLAND  
EC1V 4PY

SCHEDULE 1  
COMPANY HAVING A SHARE CAPITAL  
Memorandum of Association of  
FASHION TELEVISION INTERNATIONAL LIMITED

Each subscriber to this memorandum of association wishes to form a company under the Companies Act 2006 and agrees to become a member of the company and to take at least one share each.

Subscriber:

---

Bigfoot Entertainment Inc.

Authorising Person: Kathleen Andrews

Authentication: Authenticated Electronically

Dated: 7 Oct 2014



December 8, 2014

Via Email

Ms. Olga Chepurko  
Fashion TV  
111 Avenue Viktor Hugo  
75016 Paris France

Re: Indemnification pursuant to Carriage Agreement between Atlantic Broadband Finance, LLC ("ABB") and Fashion TV Paris FOL ("Fashion TV") effective January 1, 2011 (the "Agreement")

Dear Ms. Chepurko:

Enclosed is a notice of infringement ("Notice") from counsel for Fashion International Television Ltd. ("Fashion International"), in which counsel alleges that Fashion International has the right to use the Fashion Television mark under a license emanating from Bell Media Inc. The letter demands that ABB commit to cease and desist the broadcast of the Fashion TV channel by January 16, 2015, remove all logos of Fashion TV from listings and promotional materials and provide an itemized schedule of the payments made to Fashion TV.

In accordance with Section 6 of the Agreement, Fashion TV is required to indemnify and hold harmless ABB from any and all claims, including third-party infringement claims. As such, any liabilities and costs incurred by ABB in connection with the Notice are the responsibility of Fashion TV.

Please let us know how you would like to handle the Notice.

Sincerely,

Leslie J. Brown  
Senior Vice President and General Counsel

cc: Dave Keefe  
Heather McCallion

# FROSS ZELNICK LEHRMAN & ZISSU, P.C.

## Partners

Ronald J. Lehrman  
Stephen Bigger  
Roger L. Zissu  
Richard Z. Lehv  
David Ehrlich  
Susan Upton Douglass  
Janet L. Hoffman  
Peter J. Silverman  
Lawrence Eli Apolzon  
Barbara A. Solomon  
Mark D. Engelmann  
Nadine H. Jacobson  
Andrew N. Fredbeck  
Craig S. Mende  
Allison Strickland Ricketts

December 5, 2014

**BY FEDEX**

Atlantic Broadband  
Attn: Legal Department  
1 Batterymarch Park  
Quincy, MA 02169

Re: Infringement of FASHION TELEVISION Mark (Our Ref.: BIGF 1409881)

To Whom It May Concern:

We represent Fashion International Television Ltd., a leading provider of high-quality programming relating to the world of fashion. Under a license emanating from Bell Media Inc. ("Bell Media"), our client has the right to use the FASHION TELEVISION mark and the FT FASHION TELEVISION (and design) mark in the United States and numerous other jurisdictions throughout the world. The licensed rights include, without limitation, the right to use and enforce rights in Bell Media's incontestable registered FT FASHION TELEVISION (and design) mark (U.S. Reg. No. 2,945,407) in connection with "broadcasting programs via a global computer network" and "production and distribution of television programs; and entertainment services in the nature of an ongoing series of television programs concerning commentary, news, history and personalities in the fields of fashion, design trends, photography, art, architecture, music, pop culture, and dance." The registration has a priority date of April 17, 1996 and is based on first use of the mark in commerce in connection with the identified services at least as early as 1992.

It has come to our client's attention that Atlantic Broadband is offering a channel under the name and mark FASHION TV with content provided by FASHION TV Programmgesellschaft mbH. The use of a mark that is highly similar to the FASHION TELEVISION and FT FASHION TELEVISION (and design) marks for identical or closely related services to our client's services offered under those marks constitutes trademark infringement and unfair competition under Sections 32(1) and 43(a) of the Lanham Act, 15 U.S.C. §§ 1114(1), 1125(a), and various state laws.

For the time being we assume that Atlantic Broadband has not been aware of this infringement and, therefore, our client would agree not to pursue any further claims against Atlantic Broadband if it agrees to the following: (1) commit to cease and desist the broadcast of the FASHION TV channel by the end of the business day of January 16, 2015; (2) provide our client with an itemized schedule of what payments your company has made to FASHION TV Programmgesellschaft mbH (or any distributor that FASHION TV Programmgesellschaft mbH might have appointed, and who your company has made payments in exchange for the right to carry the FASHION TV channel on your platform); and (3) remove all logos of FASHION TV from listings on

## Counsel

James D. Silberstein  
Joyce M. Ferraro  
Robert A. Becker  
Michael Chiappetta  
Tamar Niv Bessinger  
Nancy C. DiConza

## Associates

Jason Jones  
Anna Leptic  
Leo Kittay  
Todd Martin  
Robin N. Baydurcan  
Sherri N. Duitz  
Amanda B. Agati  
Jennifer Insley-Pruitt  
Emily Weiss  
Ashford Tucker  
Jessica Meiselman  
Erica Gould  
Matthew Frisbee  
Celadon Whitehurst  
Stacy L. Wu  
Hindy Dym  
Katherine Lyon Dayton  
Maritza C. Schaeffer  
Jeffrey D. Larson\*

(F1590810 | )

Atlantic Broadband  
December 5, 2014  
Page 2

your company's promotional material (including any material printed on the Internet). We have prepared a letter of agreement that we need to receive signed by an authorized representative of Atlantic Broadband no later than close of business **December 19, 2014** confirming that Atlantic Broadband will commit to comply with the above requests.

In case we do not receive such undertaking on or before December 19, 2014, properly executed in writing and signed by an authorized representative of Atlantic Broadband, our client will have to assume that your company intends to continue the infringement of our client's trademarks and our client will not hesitate to take any action it deems necessary to protect its rights.

This letter is without waiver of or prejudice to any of our client's rights, claims and remedies, all of which are expressly reserved.

Very truly yours,

A handwritten signature in black ink that reads "David Donahue" followed by the initials "ADJ". The signature is written in a cursive, slightly slanted style.

David Donahue

Enclosure

We, \_\_\_\_\_

\_\_\_\_\_

(please state exact name of the entity)

hereby commit to end the broadcast of the television channel "Fashion TV" on our platform commercially known as:

\_\_\_\_\_ (please state name of your platform, as marketed to the public)

by the end of January 16, 2015, and remove it from all marketing material.

We have been carrying the channel since \_\_\_\_\_, and have paid for the carriage of the channel the following approximate license fees:

Year	Approx. License fee in €
2014*	
2013	
2012	
2011	
2010	

\* For the year 2014, estimates with a tolerance of +/-30% are acceptable

Signed by:

\_\_\_\_\_  
Name, Position

\_\_\_\_\_  
Signature  
Date



Please sign and date

Partners

Ronald J. Lehrman  
Stephen Bigger  
Roger L. Zissu  
Richard Z. Lehv  
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Susan Upton Douglass  
Janet L. Hoffman  
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Lydia T. Gobena  
Carlos Cucurella  
James D. Weinberger  
David Donahue  
Nancy E. Sabarra  
Charles T.J. Weigell III  
Laura Popp-Rosenberg  
Cara A. Boyle  
Karen Lim

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Matthew Frisbee  
Celadon Whitehurst  
Stacy L. Wu  
Hindy Dym  
Katherine Lyon Dayton  
Maritza C. Schaeffer  
Jeffrey D. Larson\*

December 3, 2014

Bigfoot Entertainment Inc.  
246 West Broadway  
New York, NY 10013  
Attn: Gabriel Miller

[gabriel@fashionone.com](mailto:gabriel@fashionone.com)

Re: Engagement of Fross Zelnick Lehrman & Zissu, P.C. by Bigfoot Entertainment Inc. (Our Ref.: BIGF USA TC-14/09881)

Dear Mr. Miller:

The purpose of this letter is to comply with a rule applicable to all New York lawyers, which became effective on March 4, 2002, and to set forth the terms upon which our firm, Fross Zelnick Lehrman & Zissu, P.C. ("FZLZ"), is prepared to represent Bigfoot Entertainment Inc. and its related entities (hereinafter collectively, "Client" or "you"). We ask that you direct your attention to the portions of this letter which pertain to the services you have requested.

Client is engaging FZLZ to represent it in connection with a potential trademark dispute with Fashion TV Programmgesellschaft mbh, Dish Network and Atlantic Broadband Finance, LLC concerning your FT FASHION TELEVISION mark and related matters (collectively, the "Matters"). This engagement does not, at this point, include representation in court litigation or other adversarial proceedings, which would require a further agreement and retainer.

Assignment of Firm Personnel

I will be primarily responsible for the supervision of Client's Matters, but Client is engaging FZLZ, not me individually. As and when necessary, I will draw upon the talent and expertise of other partners, counsel and associates within the firm, and utilize paralegal and other clerical or legal assistant and clerical staff to handle the Matters.

Legal Fees, Expenses, Billings

For the filing of trademark applications, as well as in connection with certain other administrative actions with the USPTO, we charge a fixed minimum fee for each application or registration. In connection with the filing of trademark applications, the fixed fee includes the basic preparation and filing of the application and reporting these actions to you, placing the applications on our records, reporting the issuance of the registration, and placing it on our maintenance system.

Client will pay for FZLZ's other services not encompassed within the fixed fee arrangement on an hourly, time-charge basis, based upon the following rates: Partners'

{F1587124.1 }

Bigfoot Entertainment Inc.  
December 3, 2014  
Page 2

hourly rates currently range from \$490 to \$675 (my rate is \$545); Counsel rates range from \$480 to \$490; Associate rates range from \$310 to \$435; and legal assistant/paralegal rates range from \$150 to \$330 per hour. The foregoing rates are subject to change, usually in January of each year. Hourly billing will be to the tenth (1/10<sup>th</sup>) of an hour for time spent on Client's Matters. It is important to understand that billable time will include telephone and personal conferences both with Client and firm personnel, legal research, and any time spent on any other tasks related to these matters such as providing preliminary advice on filings and strategies, reporting and responding to Official Actions, contacting the USPTO, reporting publication of the application, proving use and filing extensions to prove use, checking status, following up with Client or others on deadlines, updating our records, and transferring the file if you so request.

Client is responsible for any expenses properly and reasonably incurred on behalf of Client, including reimbursement of all disbursements advanced by FZLZ. Such expenses are likely to include, but are not limited to, filing and other fees paid to the Courts and/or the USPTO and other Trademark Offices, photocopying and facsimile charges, long distance telephone calls, computer research charges, charges for search reports prepared by outside vendors such as Thomson, investigator charges and charges by Washington D.C. associates who perform tasks at our request in the USPTO. Any discounts received by FZLZ for such services will be passed on to Client. Costs exceeding \$1,000.00 may be billed directly, for which Client will make prompt, direct payments to the vendor (e.g., for trademark survey experts).

As is our policy in matters of this kind, we are requesting an initial retainer of \$3,500. **An invoice is enclosed for this purpose.** This retainer is a partial advance against anticipated legal fees and disbursements and must be paid before we begin work on your Matters. In the event that a retainer is requested at a future point, such retainer is required to be paid before FZLZ will proceed with further work on the Matters, and we may require the payment of retainers prior to engaging in certain other work or incurring certain expenses, including in connection with retention of expert trial witnesses. Such retainers are advances against anticipated legal fees and disbursements and must be paid promptly so that FZLZ can work on such Matters. The advance will be applied against any of Client's bills for legal services and disbursements. If a retainer is exhausted prior to the conclusion of the Matters for which it is required, FZLZ reserves the right to request replenishment of the retainer before additional work is performed. In the event of such request, Client agrees to make such replenishment within fourteen (14) days of such request. Any unused portion of a retainer shall be returned to Client promptly upon the conclusion of the Matters or upon the termination or withdrawal of FZLZ from this engagement.

In the event our engagement for Client includes representation in an adversary proceeding in the USPTO, Client should be aware that attorney's fees are borne by each party, regardless of the outcome. In connection with lawsuits, attorney's fees are also

Bigfoot Entertainment Inc.

December 3, 2014

Page 3

generally borne by each party. While we will make every effort to collect any attorney's fees as may be available under applicable statutes for Client (or resist imposition of such fees against you), Client shall remain obligated to FZLZ for payment, including payment for any part of the fee that may be assessed against the other party to the litigation but remains unpaid by that party, as well as any part of the fee that may not be covered by the award.

In some cases, defense of a lawsuit may be covered by Client's insurance policy. In the event Clients are defendants in a lawsuit, Client should review Client's insurance policies to determine whether the cost of defending the claim, and/or the payment of any recovery if Client is found liable or settles, is covered by Client's insurance.

Itemized invoices of services and disbursements will be sent to Client monthly or when appropriate, to the address above (or such other address as Client requests in writing) with payments to be made within thirty (30) days after the invoice date. If Client has any questions or requests regarding the billing format or any information contained in any invoice or statement, please contact FZLZ promptly so that we can try to resolve any concerns promptly and amicably. Periodic statements may be sent which will summarize outstanding invoices. In the event that Client is comprised of more than one legal entity or individual, each such entity or individual shall be jointly and severally responsible for any unpaid invoices.

Client has the right to terminate this engagement at any time, subject to payment of any final billings. Likewise, FZLZ reserves the right to withdraw from the engagement, and from representing Client (subject to the ethical restrictions imposed upon us by the applicable Rules of Professional Responsibility), including in the event that Client fails to cooperate and/or fails to make timely payments as required pursuant to this letter, if Client requests that FZLZ take any position or action that in our good faith opinion requires or permits our withdrawal because of professional duties imposed upon us by the applicable Rules of Professional Responsibility, or if there is an absence of the trust and confidence essential to the attorney-client relationship. Thus, for example, if Client, in FZLZ's judgment, is delinquent in paying the invoiced amounts, FZLZ reserves its right, upon appropriate notice to Client, to take no action on a trademark application or registration, regardless of any impending deadline, even if such failure to act will cause an application or existing registration to lapse. If FZLZ otherwise seeks to terminate this engagement, FZLZ will endeavor to provide reasonable notice to Client.

Finally, please note that Part 137 of the Rules of the Chief Administrator of the courts of the State of New York provides that in certain circumstances a client has the right to require arbitration of disputes relating to legal fees. In the event of the existence of any such disputes, you or your advisor should review Part 137 in order to determine whether you have the right to require arbitration thereunder.

Bigfoot Entertainment Inc.  
December 3, 2014  
Page 4

This letter represents the terms of FZLZ's engagement. If you have any questions or concerns about these terms, please contact us immediately. **By signing below you confirm that Client has read, understood and agreed to the terms set forth above and agrees to representation under these terms.**

Very truly yours,

FROSS ZELNICK LEHRMAN & ZISSU, P.C.

By:   
David Donahue

Understood and Agreed by:

BIGFOOT ENTERTAINMENT INC.

\_\_\_\_\_  
By:

Title:

Bigfoot Entertainment Inc.

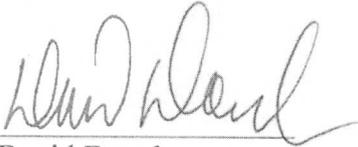
December 3, 2014

Page 4

This letter represents the terms of FZLZ's engagement. If you have any questions or concerns about these terms, please contact us immediately. **By signing below you confirm that Client has read, understood and agreed to the terms set forth above and agrees to representation under these terms.**

Very truly yours,

FROSS ZELNICK LEHRMAN & ZISSU, P.C.

By:   
David Donahue

Understood and Agreed by:

BIGFOOT ENTERTAINMENT INC.

  
By: Gabriel Miller

Title: General Counsel

FROSS ZELNICK LEHRMAN & ZISSU, P.C.

R 501656

866 UNITED NATIONS PLAZA  
NEW YORK, NY 10017-1822  
(212) 813-5900  
FEDERAL TAX I.D. NO. 13-3106281

December 3, 2014

RETAINER BILL

Bigfoot Entertainment Inc.  
246 West Broadway  
New York, NY 10013  
Attn: Gabriel Miller

TO BE APPLIED AGAINST BILLS FOR SERVICES RENDERED

[gabriel@fashionone.com](mailto:gabriel@fashionone.com)

Re: Engagement of Fross Zelnick Lehrman & Zissu, P.C.  
by Bigfoot Entertainment Inc. (BIGF USA TC-14/09881)

Advance retainer per December 3, 2014 engagement letter.

\$3,500

**TOTAL THIS INVOICE**

**\$3,500**

WIRE PAYMENTS MAY BE SENT TO:

CITIBANK N.A.  
666 FIFTH AVENUE  
NEW YORK, NY 10103  
ACCOUNT NUMBER: 30426424  
FEDERAL RESERVE NUMBER: 021000089  
SWIFT Address: CITI US 33

**Samuel Blaustein**

---

**From:** David Donahue <ddonahue@fzlj.com>  
**Sent:** Tuesday, April 07, 2015 5:08 PM  
**To:** Raymond Dowd  
**Cc:** 'Mark Lerner'; 'McNamara, Elizabeth'; Samuel Blaustein; Roger Zissu  
**Subject:** F.TV Ltd. v. Bell Media Inc., No. 14 Civ. 9856 (KBF) (S.D.N.Y.)

Dear Ray,

Pursuant to the Court's endorsed order of April 7, 2015 directing "FZLZ to state whether FTIL directed FZLZ to send the cease-and-desist letters or, in the alternative, to state that no such direction was given," we hereby answer as follows:

We were directed to send the cease-and-desist letters on behalf of FTIL by Gabriel Miller, Esq., whom we understood had authority to do so.

Sincerely,

David Donahue  
Fross Zelnick Lehrman & Zissu, P.C.  
866 United Nations Plaza  
New York, New York 10017  
Phone: 212-813-5900  
Fax: 212-813-5901  
Web: [www.fzlj.com](http://www.fzlj.com)

---

The information contained in this email message may be privileged, confidential, and protected from disclosure. Any unauthorized use, printing, copying, disclosure or dissemination of this communication may be subject to legal restriction or sanction. If you think that you have received this email message in error, please reply to the sender.

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**COMPLAINT TRANSMITTAL COVERSHEET**

Attached is a Complaint that has been filed against you with the World Intellectual Property Organization (**WIPO**) Arbitration and Mediation Center (the **Center**) pursuant to the Uniform Domain Name Dispute Resolution Policy (the **Policy**) approved by the Internet Corporation for Assigned Names and Numbers (**ICANN**) on October 24, 1999, the Rules for Uniform Domain Name Dispute Resolution Policy (the **Rules**) approved by ICANN on October 30, 2009, and the WIPO Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the **Supplemental Rules**).

The Policy is incorporated by reference into your Registration Agreement with the Registrar(s) of your domain name(s), in accordance with which you are required to submit to a mandatory administrative proceeding in the event that a third party (a **Complainant**) submits a complaint to a dispute resolution service provider, such as the Center, concerning a domain name that you have registered. You will find the name and contact details of the Complainant, as well as the domain name(s) that is/are the subject of the Complaint in the document that accompanies this Coversheet.

You have no duty to submit a Response to the Complaint until you have been formally Notified of the Complaint and Commencement of Administrative Proceedings by the Center. Once the Center has checked the Complaint to determine that it satisfies the formal requirements of the Policy, the Rules and the Supplemental Rules, it will forward an official copy of the Complaint, including annexes, to you by e-mail as well as sending you hardcopy Written Notice by post and/or facsimile, as the case may be. You will then have 20 calendar days from the date of Commencement within which to submit a Response to the Complaint in accordance with the Rules and Supplemental Rules to the Center and the Complainant. You may represent yourself or seek the assistance of legal counsel to represent you in the administrative proceeding.

- The **Policy** can be found at <http://www.icann.org/en/dndr/udrp/policy.htm>
- The **Rules** can be found at <http://www.icann.org/en/dndr/udrp/uniform-rules.htm>
- The **Supplemental Rules**, as well as other information concerning the resolution of domain name disputes can be found at <http://www.wipo.int/amc/en/domains/supplemental/eudrp/>
- A **model Response** can be found at <http://www.wipo.int/amc/en/domains/respondent/index.html>

Alternatively, you may contact the Center to obtain any of the above documents. The Center can be contacted in Geneva, Switzerland by telephone at +41 22 338 8247, by fax at +41 22 740 3700 or by e-mail at [domain.disputes@wipo.int](mailto:domain.disputes@wipo.int).

You are kindly requested to contact the Center to provide an alternate e-mail address to which you would like (a) the Complaint, including Annexes and (b) other communications in the administrative proceeding to be sent.

A copy of this Complaint has also been sent to the Registrar(s) with which the domain name(s) that is/are the subject of the Complaint is/are registered.

By submitting this Complaint to the Center the Complainant hereby agrees to abide and be bound by the provisions of the Policy, Rules and Supplemental Rules.

**WORLD INTELLECTUAL PROPERTY ORGANIZATION  
ARBITRATION AND MEDIATION CENTER**

**Fashion Television International Limited**  
20-22 Wenlock Road  
London N1 7GU  
Great Britain

**(Complainant)**

-v-

**fashiontv.com GmbH**  
Brienner Str. 21  
80333 Munich  
Germany

**(Respondent)**

---

**Disputed Domain Name:**

**<fashiontv.com>**

**COMPLAINT**

(Rules, Paragraph 3(b); Supplemental Rules, Paragraphs 4(a), 12(a), Annex E)

**I. Introduction**

[1.] This Complaint is hereby submitted for decision in accordance with the Uniform Domain Name Dispute Resolution Policy (the **Policy**), approved by the Internet Corporation for Assigned Names and Numbers (**ICANN**) on October 24, 1999, the Rules for Uniform Domain Name Dispute Resolution Policy (the **Rules**), approved by ICANN on October 30, 2009, and the WIPO Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the **Supplemental Rules**).

## II. The Parties

### A. The Complainant

(Rules, Paragraphs 3(b)(ii) and (iii))

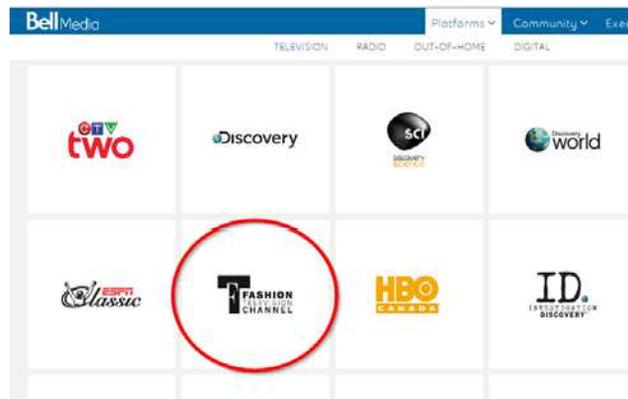
[2.] The Complainant in this administrative proceeding is **Fashion Television International Limited**, 20-22 Wenlock Road, London N1 7GU, Great Britain.

#### aa. **The Complainant and the Program FASHION TELEVISION**

The complainant is a (sub-) licensee of Community Trademark Registration No. 599 829 FASHION TELEVISION (& device) which is the basis for this complaint (for more information, please see clause VII. A. below). The Complainant is entitled by the trademark owner, Bell Media Inc. (hereinafter referred to as **Bell Media**), Canada, to claim rights resulting from Community Trademark Registration No. 599 829 FASHION TELEVISION (& device) in its own name. Corresponding documents could be submitted if the aforesaid is disputed.

Bell Media is a big Canadian undertaking within the media business. It is part of the Bell Canada group. Bell Media produces and broadcasts up-to-date television programs and – shows, including 35 specialized thematic channels such as the program FASHION TELEVISION. Bell Media operates a corresponding large network of radio and TV channels.

As mentioned above, one of the approximately 35 specialized thematic channels is the program FASHION TELEVISION, according to the following screenshot, available via [www.bellmedia.ca](http://www.bellmedia.ca):



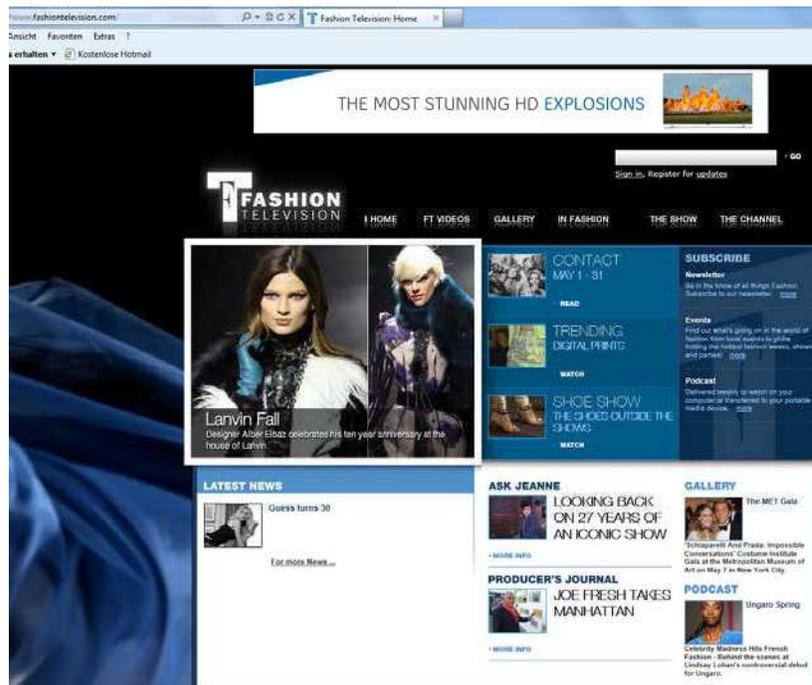
FASHION TELEVISION airs lifestyle related content with respect to the topics fashion, models, art, architecture and design as shown on the screenshot of the websites www.bellmedia.ca below:



The main websites of the channel FASHION TELEVISION are available via

**www.fashiontelevision.com.**

For the Office's ease of reference a corresponding screenshot of www.fashiontelevision.com is depicted below:



As per today, the domain <fashiontelevision.com> is registered in the name of Bell Media and was registered already on 25.05.1998, see

- Annex 1 -

**bb. Background and Corporate History of the Channel FASHION TELEVISION Owners**

Initially, FASHION TELEVISION was produced and broadcasted by the CHUM Corporation.

On 14.012.2000 CHUM was given a broadcasting license (No. CRTC 2000-452) for the program FASHION TELEVISION; see

- Annex 2 -

On 07.03.2001, the Corporation was incorporated by Articles of Incorporation pursuant to the Business Corporations Act (Ontario) under the name CHUMCITY International Corp., registered under Ontario corp. #1466668. Only on 07.09.2006, CHUMCITY started broadcasting of FASHION TELEVISION according to the online article “History of CHUM” of www.friends.ca dated 12.07.2006, please see

- Annex 3 -

On 01.10.2003, CHUMCITY filed Articles of Amendment to change its name from CHUMCITY International Corp. to CHUM Television International Cor. (hereinafter referred to as **CHUM Television**).

On 21.07.2011, CHUM Television and Bell Media entered into a Distribution and Wind-Up Agreement whereby CHUM Television transferred all of its rights, assets, titles and interests to Bell Media. Immediately following the execution of the Distribution and Wind-UP Agreement, the CHUM Television filed Articles of Dissolution pursuant to the Business Corporations Act (Ontario) which resulted in the dissolution of CHUM Television as of 21.07.2011.

A corresponding statutory declaration regarding the corporate history as executed by Mr. Kevin A. Assaff, Corporate Secretary of Bell Media, dated 17.10.2014 is enclosed to this complaint as

- Annex 4 -

[3.] The Complainant's contact details are:

**Fashion Television International Limited**  
20-22 Wenlock Road  
Address: London N1 7 GU  
United Kingdom

[4.] The Complainant's authorized representative in this administrative proceeding is:

Ms. Gwen Jayme  
20-22 Wenlock Road  
London N1 7 GU  
United Kingdom

[5.] The Complainant's preferred method of communications directed to the Complainant in this administrative proceeding is:

Electronic-only material

Method: e-mail  
Address: gwen@fashiontelevision.com  
Contact: Gwen Jayme

**B. The Respondent**  
(Rules, Paragraph 3(b)(v))

[6.] According to the databases “Whois” of the company TUCOWS, Inc., available via <http://www.tucowsdomains.com/whois> regarding the domain name <fashiontv.com>, Respondent in these proceedings is the German company **fashiontv.com GmbH**, Brienner Str. 21, 80333 Munich, Germany.

A corresponding excerpt of the aforesaid “Whois” databases, conducted on 20.03.2015 is enclosed as

- Annex 5 -

[7.] All information known to the Complainant regarding how to contact the Respondent is as follows:

**fashiontv.com GmbH**

c/o Attomey-at-law Mr. Jukbowicz

Brienner Str. 21

80333 Munich

Germany.

A corresponding excerpt from the German Companies’ Registry is enclosed as

- Annex 6 -

The Respondent is a dummy corporation which merely has a letter-box-company under the above referenced address in Munich, Germany.

The websites available via [www.fahsiontv.com](http://www.fahsiontv.com) are the main websites of the corresponding television channel FASHION TV of Fashion TV Programmgesellschaft mbH, Wasagasse 4, 1090 Vienna, Austria, and its founder, Mr. Michel Adam (Michel Adam is a pseudonym, the true name is Mr. “Adam Lisowski”).

Consequently, it is not surprising at all that administrator of the domain name <fashiontv.com> is a person called Mr. Gabriel Lisowski, apparently a relative of Mr. Adam Lisowski (supposedly his brother).

The television channel FASHION TV, respectively FASHIONTV also covers that topics related to the international fashion scene and lifestyle. Just like FASHION TELEVISION, FASHION TV broadcasts in English language.

**III. The Domain Name(s) and Registrar(s)**  
(Rules, Paragraphs 3(b)(vi), (vii))

[8.] This dispute concerns the domain name identified below:

**<fashiontv.com> with a creation date of 15.03.1996.**

However, we would like to point out to the fact that the address of the Respondent together with attorney-at-law Mr. Jakubowicz as the registrant are firstly mentioned on **01.04.2007** according to a domain name search via “Domaintools” in

**- Annex 7 -**

(see page 7).

Annex 7 further shows, that the domain name <fashiontv.com> was registered in the name of various persons.

[9.] The registrar(s) with which the domain name(s) is/are registered is/are:

**Key-Systems GmbH**

Im Oberen Werk 1

66386 St. Ingbert

Germany

Phone: +49 (0) 68 94 – 93 96 850

Fax: + 49 (0) 68 94 – 93 96 851

Email: info@key-systems.net

CEO: Alexander Siffrin

Authorized signatories: Volker Greimann & Peggy Lücke

Register of companies: HR B 18835 - Saarbrücken

VAT ID number: DE 211 006 534

**IV. Language of Proceedings**  
(Rules, Paragraph 11)

[10.] To the best of the Complainant's knowledge, the language of the Registration Agreement is English, a copy of which is provided as

**- Annex 8 -**

to this Complaint. The Complaint has been submitted in English.

**V. Jurisdictional Basis for the Administrative Proceeding**  
(Rules, Paragraphs 3(a), 3(b)(xv))

[11.] This dispute is properly within the scope of the Policy and the Administrative Panel has jurisdiction to decide the dispute. The registration agreement, pursuant to which the domain name that is the subject of this Complaint is registered, incorporates the Policy (see clause 9.).

A true and correct copy of the domain name dispute policy that applies to the domain name in question is provided as

**-Annex 9 -**

to this Complaint and can be found at [https://www.icann.org/resources/pages/policy-2012-02-25-de?routing\\_type=path](https://www.icann.org/resources/pages/policy-2012-02-25-de?routing_type=path).

**VI. Factual and Legal Grounds**

(Policy, Paragraphs 4(a), (b), (c); Rules, Paragraph 3)

[12.] This Complaint is based on the following grounds:

**A. The domain name(s) is(are) identical or confusingly similar to a trademark or service mark in which the Complainant has rights;**

(Policy, Paragraph 4(a)(i); Rules, Paragraphs 3(b)(viii), (b)(ix)(1))

**aa. Trademark the Complaint is Based On**

Due to the above mentioned “Distribution and Wind-Up Agreement”, Bell Media is owner of Community Trademark Registration No. 599 829 FASHION TELEVISION (& device) (hereinafter referred to as **Trademark of Complaint**) which is registered with a priority of **11.08.1997** *inter alia* for the services

*“Television broadcasting services; telecommunications services; interactive electronic communications services; terrestrial broadcasting services; cable broadcasting services; satellite broadcasting services; production and distribution of television programs; providing information, education and entertainment services and the like via the media of television, satellite, telephone cable, audio, video, computer, electronic mail, the internet and other electronic media”*

in international classes 38 and 41.

An excerpt of the OHIM’s online databases regarding the Trademark of Complaint is enclosed as

**- Annex 10 -**

**bb. Use of the Mark FASHION ONE in Europe**

On 15.05.2014, Fashion TV Programmgesellschaft mbH, Vienna, Austria, filed a cancellation action based on non-use against the Trademark of Complaint with the OHIM.

However, it has to be explicitly pointed out that the Trademark of Complaint is *inter alia* used for the services

*“Television broadcasting services; satellite broadcasting services; production and distribution of television programs”.*

**(1) Broadcasting in Scandinavia/Baltic Area and the Benelux via Nonstop Television**

As far as the Scandinavian/Baltic area is concerned, use of the mark FASHION ONE (& device) takes place by the television channel “Star! Scandinavia” of the Swedish company Nonstop Television 1.0 AB. “Star! Scandinavia” covers the broadcasting areas of Sweden, Denmark, Finland, Norway, Iceland, Lithuania, Estonia, Latvia, Belgium, the Netherlands and Luxemburg (see Schedule C of Annex 11 below).

According to

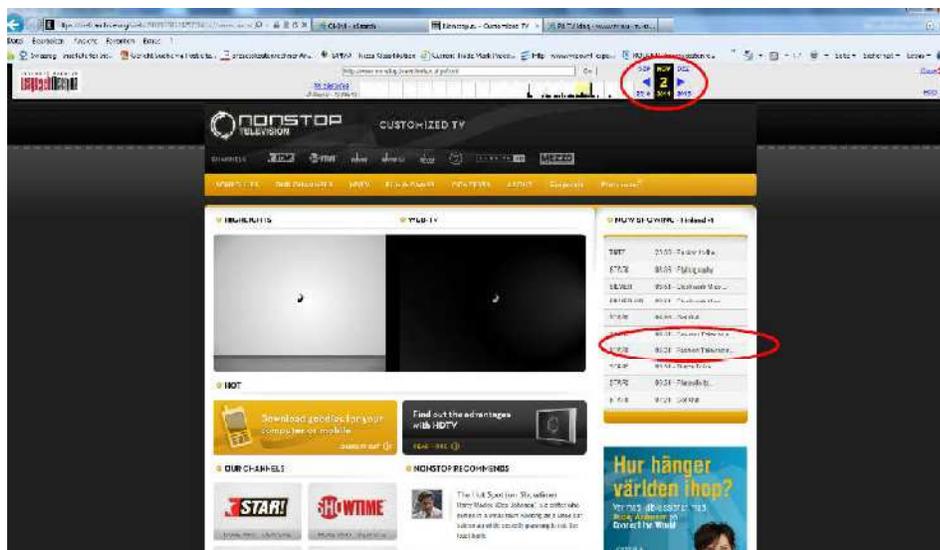
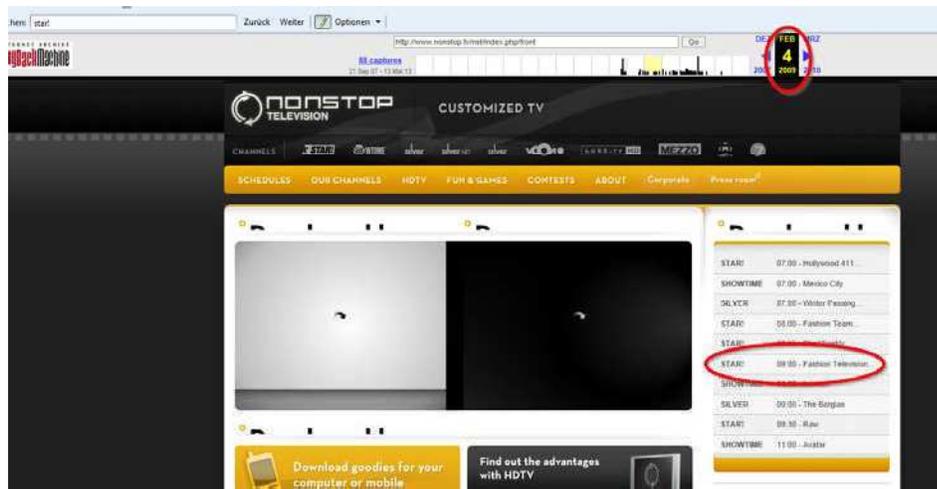
**- Annex 11 -**

Nonstop Television 1.0 AB has concluded a license agreement with CHUM TELEVISION (back then CHUMCITY) on 28.12.2003 already, which was replaced by the agreement of 01.10.2008 as submitted in Annex 11.

The fact that a licensing agreement existed in December 2003 shows that broadcasting within the Scandinavian, Baltic and Benelux area of the European Union was started early in 2004.

On that basis, FASHION TELEVISION is broadcasted on “Star! Scandinavia” until today within the area as outlined above.

As an example two announcements on [www.nonstop.tv](http://www.nonstop.tv) for such FASHION TELEVISION shows via “Star! Scandinavia” of 04.02.2009 and 02.11.2011 are depicted as follows:



As one can see from Schedule A of Annex 11, CHUM Television has delivered 43 episodes of FAHSION ONE between 01.01.2008 and 31.08.2009 with a total of 21,5 hours of broadcasting time. Between 01.09.2009 and 31.08.2010, 30 episodes of FASHION ONE covering 15 hours of broadcasting time have been delivered. The same counts with respect to the time period between 01.09.2010 until 31.08.2011 as well as 01.09.2011 until 31.08.2012. The delivered episodes were broadcasted via “Star! Scandinavia” repeatedly during the week within the aforementioned time frames.

The licensing agreement with Nonstop Television 1.0 AB is valid until today. Accordingly “Star!” airs FASHION ONE shows until today. In this context we would like to show the example of the broadcasting announcement regarding the episode titled “Victoria Bekcham’s Fashion Fantasy” on www.tv.nu for 21.11.2014:



## (2) Broadcasting of FASHION TELEVISION by further Licensees within Europe

According to the list of licensees for FASHION ONE episodes as submitted as

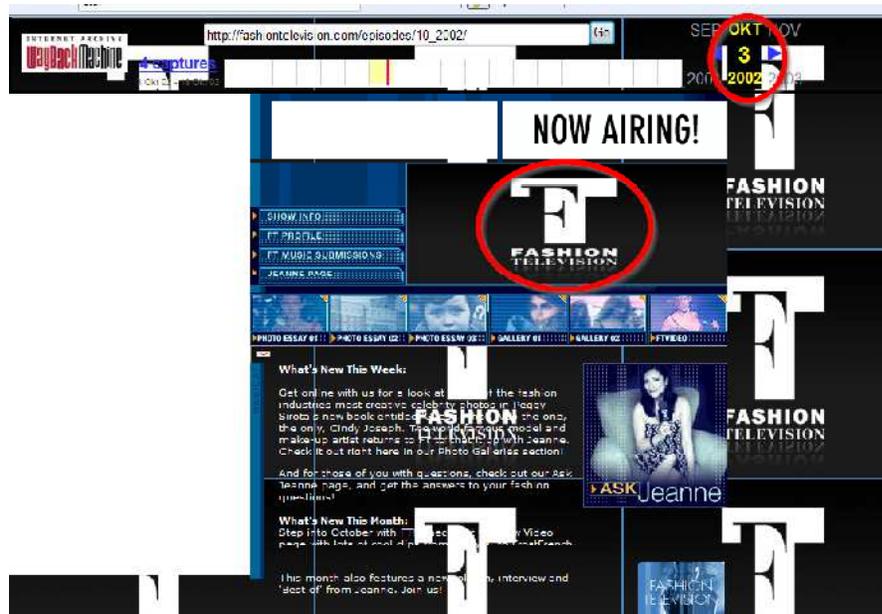
**- Attachment 12 -**

the FASHION TELEVISION episodes were also marketed and sold by various distribution partners within the different member states of the EU.

- Between 01.02.2007 and 31.01.2010, episodes 1U – 34U were marketed/sold in the Czech Republic and Slovakia by SPI Internaional by “free TV and cable/satellite.
- Via Vitaya TV, in Belgium and the Netherlands episodes 13-30 Season V were marketed between 01.04.2008 and 31.03.2010 via “cable & pay-tv, pa per video (PPV) and video on demand (VOD)”. Moreover, between 24.09.2008 and 13.09.2013 episodes 1 – 30 Season W were marketed/sold.
- Furthermore, regarding Poland, Hungary and Romania, the distribution partner Zone Club Channel respectively Romantica have marketed/sold episodes Season V, Season W and Season X between 01.04.2010 – 31.03. 2013 as well as between 01.10.2010 and 30.09.2013 via cable, satellite, DTT, VOD, free tv and PPV.
- In addition, the distribution partner Upsite Television has marketed/sold episodes Season X (2009/2010), Season Y (2010/2011) between 01.10.2010 – 30.09.2012 in France and Belgium.
- In Great Britain, the distribution partner Beyond Distribution has marketed/sold episodes Season Y and Season Z (2010/2011 and 2011/2012) between 01.09.2011 until 19.02.2012.

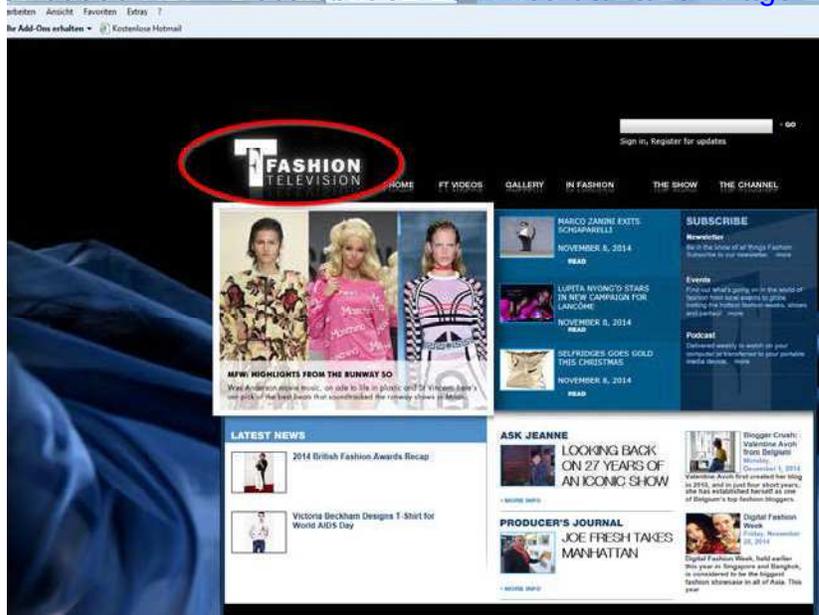
**(3) Broadcasting of FASHION TELEVISION via www.fashiontelevision.com**

As indicated above, the FASHION ONE program is also aired via the main websites www.fashiontelevision.com worldwide according to usual practice in this branch of media. The below depicted screenshot of 02.10.2002 shows that the Trademark of Complaint was prominently used back then:



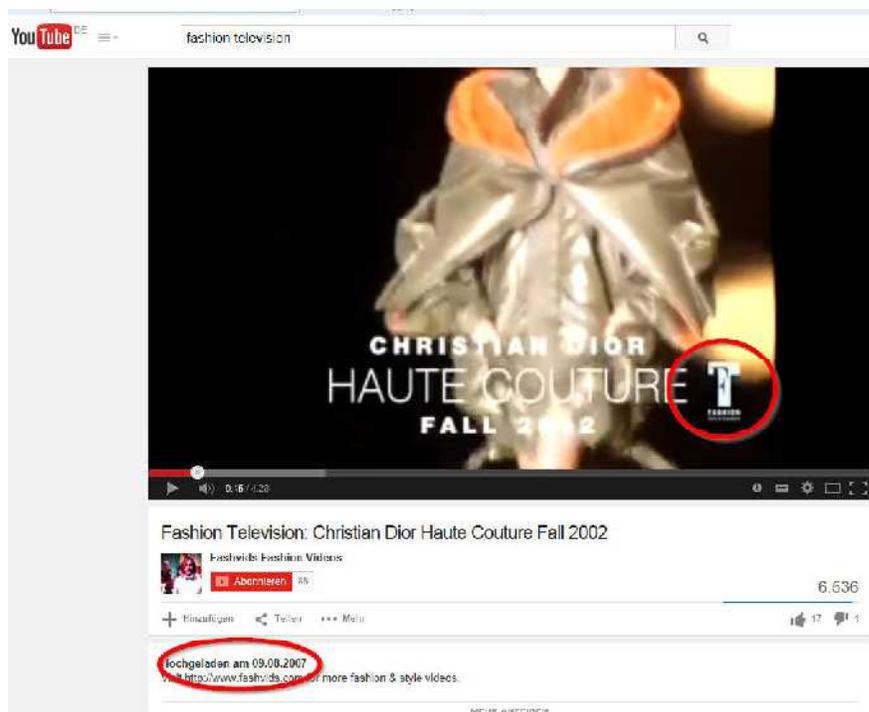
**(4) Broadcasting of FASHION TELEVISION via www.fashontelelevision.co.uk in the UK**

Besides the main websites www.fashiontelevision.com, FASHION TELEVISION is also aired via national cc TLDs like for example the UK websites www.fashontelelevision.co.uk. A corresponding screenshot is shown below:



**(5) Broadcasting of FASHION TELEVISION via YOUTUBE**

Moreover, FASHION ONE was broadcasted by an own YouTube channel. This is also common practice nowadays. As an example, we would like to show the below screenshot of a video broadcasted via the German YouTube sites YouTube(DE) which was uploaded on 09.08.2007. Said screenshot also prominently shows the Trademark of Complaint as the name of the specific program:



**cc. Likelihood of Confusion**

The domain name <fashiontv.com> is confusingly similar to the Trademark of Complaint, namely FASHION TELEVISION (& device).

Free of doubt, the consumers will recognize the element “tv” of <fashiontv.com> as an abbreviation or acronym for “television”. Therefore, both signs overlap identically from a conceptual consumer perception. Due to this identical overlap, consumer confusion cannot be excluded. Moreover, both signs overlap identically in the element FASHION. The conceptual identity is increased by the fact that the terms <fashiontv.com> and FASHION TELEVISION are nearly identical creations of words, namely FASHION + TV and FASHION + TELEVISION. This is a further aspect which leads to consumer confusion.

Moreover, it is clear that the consumers will perceive the element “.com” of <fashiontv.com> as being a descriptive element for Websites. Further, the figurative elements of the Trademark of Complaint will most likely only be perceived as decoration and not as an indication of origin. Also, with regard to the figurative elements, the principle applies that the consumers do not name any graphic elements when aurally referring to a mark.

In light of the above, it has to be concluded that both signs are nearly identical and (*direct*) consumer confusion is expected.

In addition, it cannot be excluded that the consumers would confuse the signs *indirectly*. Theoretically, it is perceivable that the consumers might probably perceive the differences in the endings “TV” and “TELEVISION”. Nevertheless, the consumers might believe the Complainant and the Respondent are economically linked with each other for example by way of licensing agreements.

We would finally like to mention the decision *Disney Enters. Inc. v McSherry*, FA154589 (Nat. Arb. Forum June 17, 2003 <http://domains.adrforum.com/domains/decisions/154589.htm>). In the aforementioned decision the domain name <disneyvacationsvillas.com> was held to be confusingly similar with respect to the trademark DISNEY of the complainant as the trademark was identically included within the contested domain name. Consequently, the same must apply, here.

**B. The Respondent has no rights or legitimate interests in respect of the domain name(s);**

(Policy, Paragraph 4(a)(ii); Rules, Paragraph 3(b)(ix)(2))

Evidence has shown that the Respondent has registered the domain name <fashiontv.com> only on 01.04.2007.

By contrast, the complainant has started broadcasting of FASHION TELEVISION together with the use of the Trademark of Complaint FASHION TELEVISION (& device) early 2004 already. The Complainant has not authorized the Respondent to use its well-known trademark.

Respondent uses its websites <fashiontv.com> for commercial purposes in order to confuse the consumers about the trade origin of the relevant services. It is clear that Respondent wants to free ride on the economically success of the program FASHION TELEVISION and its corresponding websites [www.fashiontelevision.com](http://www.fashiontelevision.com) without any compensation. The FASHION TELEVISION program of the Complainant was known to the Respondent as they are competitors and before taking over the domain name <fashiontv.com> in April 2007.

Therefore, the Respondent has no rights or legitimate interest in respect of the domain name <fashiontv.com>.

C. **The domain name(s) was/were registered and is/are being used in bad faith.**  
(Policy, paragraphs 4(a)(iii), 4(b); Rules, paragraph 3(b)(ix)(3))

Respondent has solely acquired the domain name <fashiontv.com> in order to disrupt the Complainant in its economical efforts regarding the trademark FASHION TELEVISION (& device) and the corresponding websites www.fashiontelevision.com.

It is the Respondent's intention to attract for commercial gain, Internet users to its websites by creating a likelihood of confusion with the Complainant's mark as to the source and endorsement of the Respondent's websites. The Respondent is using a nearly identical sign to the Trademark of Complaint in their domain name <fashiontv.com>.

**VII. Remedies Requested**  
(Rules, Paragraph 3(b)(x))

[13.] In accordance with Paragraph 4(i) of the Policy, for the reasons described in Section VI. above, the Complainant requests the Administrative Panel appointed in this administrative proceeding that the disputed domain name <fashiontv.com> be transferred to the Complainant.

**VIII. Administrative Panel**  
(Rules, Paragraph 3(b)(iv); Supplemental Rules, Paragraph 8(a))

[14.] The Complainant elects to have the dispute decided by a "single-member Administrative Panel".

**IX. Mutual Jurisdiction**  
(Rules, Paragraph 3(b)(xiii))

[15.] In accordance with Paragraph 3(b)(xiii) of the Rules, the Complainant will submit, with respect to any challenges that may be made by the Respondent to a decision by the Administrative Panel to transfer or cancel the domain name that is the subject of this Complaint, to the jurisdiction of the courts at the location of the domain name holder's address, as shown for the registration of the domain name(s) in the concerned registrar's WhoIs database at the time of the submission of the Complaint to the Center.

**X. Other Legal Proceedings**  
(Rules, Paragraph 3(b)(xi))

[16.] There are no further legal proceedings pending relating to the domain name in dispute.

**XI. Communications**  
(Rules, Paragraphs 2(b), 3(b)(xii); Supplemental Rules, Paragraphs 3, 4, 12)

[17.] A copy of this Complaint, together with the cover sheet as prescribed by the Supplemental Rules, has been sent or transmitted to the Respondent on 26 March 2015 by mail to the address as indicated above.

[18.] A copy of this Complaint has been sent or transmitted to the concerned registrar(s) on 26 March 2015 by email.

[19.] This Complaint is submitted to the Center in electronic form, including annexes, in the appropriate format.

**XII. Payment**

(Rules, Paragraph 19; Supplemental Rules Paragraph 10, Annex D)

- [20.] As required by the Rules and Supplemental Rules, payment in the amount of USD 1.500 has been made by bank transfer to the WIPO's account:

WIPO / OMPI, 34 chemin des Colombettes, 1211 Geneva 20, Switzerland

IBAN: CH68 0483 5063 0397 8200 0

Swift Code: CRESCHZZ80A

Bank: Credit Suisse, 1211 Geneva 70, Switzerland

Subject: UDRP Bewscherde gegen <FASHIONTV.COM> ; Complainant: Fashion Television International Limited

**XIII. Certification**

(Rules, Paragraph 3(b)(xiv); Supplemental Rules, Paragraph 14)

- [21.] The Complainant agrees that its claims and remedies concerning the registration of the domain name(s), the dispute, or the dispute's resolution shall be solely against the domain name holder and waives all such claims and remedies against (a) the WIPO Arbitration and Mediation Center and Panelists, except in the case of deliberate wrongdoing, (b) the concerned registrar(s), (c) the registry administrator, (d) the Internet Corporation for Assigned Names and Numbers, as well as their directors, officers, employees, and agents.
- [22.] The Complainant certifies that the information contained in this Complaint is to the best of the Complainant's knowledge complete and accurate, that this Complaint is not being presented for any improper purpose, such as to harass, and that the assertions in this Complaint are warranted under the Rules and under applicable law, as it now exists or as it may be extended by a good-faith and reasonable argument.

Respectfully submitted,

  
Gwen Jayme  
Corporate Secretary

Date: March 26, 2015

**XIV. List of Annexes**

(Rules, Paragraph 3(b)(xv); Supplemental Rules, Paragraphs 4(a), 12(a), Annex E)

- Annex 1: Whois Tucows. Inc. regarding <fashiontelevision.com>
- Annex 2: Licensinig Agreement CHUM
- Annex 3: Online article "History of CHUM"
- Annex 4: Statutory Declaration Mr. Kevin A. Assaff
- Annex 5: Whois Tucows. Inc. regarding <fashiontv.com>
- Annex 6: Excerpt Companies' Registry
- Annex 7: Copy "Domaintools"-Search
- Annex 8: Copy Registration Agreement Key-Systems GmbH
- Annex 9: Copy Rules icann.org
- Annex 10: Excerpt CTM FASHION TELEVISION (& device) from OHIM's database
- Annex 11: Coy Licensing CHUMCITY and Nonstop Television
- Annex 12: List of licensees of FASHION TELEVISION

This TRADEMARK ASSIGNMENT AGREEMENT ("Agreement") between Bell Media Inc., having a place of business at 9 Channel Nine Court, Scarborough, Ontario M1S 4B5 ("Bell") and Bigfoot Entertainment Inc. ("Bigfoot"), having a place of business at 246 West Broadway, New York, New York, USA 10013 is made and effective as of 24 December 2014 (the "Effective Date").

**WHEREAS**

A. Bell is (or was, including, without limitation, through its predecessors CHUM Limited, CTV Limited and/or CTV Inc) the owner of certain trademarks comprising its FASHION TELEVISION brand for use in association with goods and/or services including, amongst others, television broadcasting, programming and distribution services, telecommunications services and entertainment services (the "Trademarks" as set out in Schedule "A" ["Trademarks"] and as defined further herein). (Capitalized terms are defined in Schedule "B" ["Definitions"]);

B. Bell and Bigfoot have previously entered into a binding Letter of Intent dated October 10, 2014 (the "License Agreement"), a copy of which is attached as Schedule "C" ("License Agreement") hereto, pursuant to which Bell grants Bigfoot the right to use certain of the Trademarks;

C. Bell (under its previous name CTV Limited) has previously assigned certain of the Trademarks and the registrations thereof (the Previously Assigned Trademarks) to Bigfoot Affiliates Fashion Television International Limited ("FTIL") and Fashion Television (Asia) PTE Ltd. ("FTA") effective 1 December 2014 pursuant to separate assignment agreements (the "Previous Assignment Agreements");

D. Bigfoot now wishes to purchase from Bell all Trademarks owned by Bell not already assigned to FTIL and FTA (the "Remaining Trademarks") and all of Bell's worldwide rights, title and interest therein, including the registrations thereof excluding the Canadian Trademarks and all of Bell's rights, title and interest therein in Canada; and

E. Bigfoot also wishes to purchase from Bell the domain name www.fashiontelevision.com (the "Domain Name");

F. Pursuant to the terms and conditions of this Agreement, Bell is willing to sell, assign and transfer to Bigfoot the Remaining Trademarks (and all of its worldwide rights, title and interest therein) excluding the Canadian Trademarks (and all of Bell's rights, title and interest therein in Canada) and the Domain Name.

NOW, THEREFORE, in consideration of the payment of the Purchase Price (as defined herein) by Bigfoot to Bell and the mutual obligations of the Parties herein, the Parties agree as follows:

**1.0 Definitions and Interpretation.**

1.1 Definitions. For the purposes of this Agreement, in addition to the terms defined throughout this Agreement, the terms set out in Schedule "B" ("Definitions") have the meanings set out therein. Grammatical variations of such terms have corresponding meanings.

1.2 Currency. Unless otherwise indicated, all dollar amounts referred to in this Agreement are expressed in United States dollars.

1.3 Schedules. The following schedules are attached and form part of this Agreement:

Execution Copy

OTT\_LAW\4890928\29

Schedule "A"	-	Trademarks
Schedule "B"	-	Definitions
Schedule "C"	-	License Agreement
Schedule "D"	-	Short-Form Assignment
Schedule "E"	-	Comfort Letters
Schedule "F"	-	Registrations
Schedule "G"	-	Canadian Trademarks
Schedule "H"	-	Previously Assigned Trademarks
Schedule "I"	-	Previous Assignment Agreements

**2.0 License Agreement**

**2.1 Termination.** The Parties hereby terminate the License Agreement by mutual agreement effective as of the Effective Date. The Parties agree that, notwithstanding any provision of the License Agreement to the contrary (express or implied), (i) no terms, conditions or obligations of either Party contained in the License Agreement shall survive termination of the License Agreement, and (ii) neither Party shall be liable to the other Party for any compensation, reimbursement or damages of any kind for the sole reason of, or due solely to, the termination of the License Agreement.

**3.0 Assignment**

**3.1 Assignment.** Subject to the terms and conditions of this Agreement, in consideration of the full and complete payment to Bell by Bigfoot of the Purchase Price, Bell hereby sells, assigns and transfers to Bigfoot the following (the "Purchased Assets"):

**3.1.1** the Remaining Trademarks and all of its worldwide rights, title and interest therein including, without limitation, all of the following (if any): all registrations thereof (including without limitation the registrations set out in Schedule "F" ["Registrations"], all of its statutory and common law rights therein, all of its goodwill associated therewith, all of its rights of action appurtenant or relating thereof (including, without limitation, all rights as a party in any legal or administrative proceeding), and all of its right to sue for, collect, and retain damages, interests, profits and costs for past infringement thereof specifically excluding the Canadian Trademarks (and all of its rights, title and interest therein in Canada), and;

**3.1.2** The Domain Name.

all of the same to be held by Bigfoot as fully and effectively as they would have been held by Bell has this assignment not taken place.

**3.2 Domain Name Transfer.** For the purpose of clarity, notwithstanding the sale, assignment and transfer of the Domain Name pursuant to Section 3.1, Bell shall not be obligated to transfer control of the Domain Name to Bigfoot prior to the earlier of (i) the date sixty (60) days following the execution of this Agreement by Bell or (ii) such other time as agreed between the Parties. For the purpose of clarity, Bell does not sell, assign, or transfer to Bigfoot the domain name [www.fashiontelevision.ca](http://www.fashiontelevision.ca) nor does Bigfoot acquire any rights, title or interest in or to said domain name pursuant to this Agreement.

**3.3 Short-Form Assignment.** Concurrently with the execution and delivery of this Agreement, Bell shall execute and deliver to Bigfoot the Short-Form Assignment attached hereto as Schedule "D" ("Short Form Assignment").

Execution Copy

**4.0 Purchase Price**

4.1 **Purchase Price.** In full consideration of the sale, assignment and transfer by Bell to Bigfoot of the Remaining Trademarks and the Previously Assigned Trademarks (the "Purchased Trademarks") and the Domain Name, Bigfoot shall pay Bell the amount of four million dollars (\$4,000,000.00) (the "Purchase Price" or "Full Purchase Price").

4.1.1 Notwithstanding Section 4.1, the Parties agree that if any European Registration(s) is/are finally and conclusively cancelled pursuant to any of the European Cancellation Actions after recourse to all applicable and available appeals, the Purchase Price shall be reduced as follows:

4.1.1.1 by the amount of five hundred thousand dollars (\$500,000.00) if European Registration 599829 for the trademark Bigfoot FASHION TELEVISION Design is finally and conclusively cancelled pursuant to European Cancellation Action 9328;

4.1.1.2 by the amount of two hundred fifty thousand dollars (\$250,000.00) if European Registration 776823 for the trademark FASHION TELEVISION THE CHANNEL Design is finally and conclusively cancelled pursuant to European Cancellation Action 10157, and ;

4.1.1.3 by the amount of two hundred fifty thousand dollars (\$250,000.00) if European Registration 776864 for the trademark FASHION TELEVISION THE CHANNEL is finally and conclusively cancelled pursuant to European Cancellation Action 10156.

4.2 **Payment.** Bigfoot shall pay Bell the Full Purchase Price, less the amount of one million dollars (\$1,000,000.00) already paid to Bell by Bigfoot pursuant to the License Agreement on or about October 15, 2014, within thirty (30) days of the Effective Date, by irrevocable transfer of funds to the account designated by Bell;

4.2.1 Bell shall issue an invoice in respect of the payment of the Full Purchase Price to be paid to Bell by Bigfoot pursuant to Section 4.2.1 hereof within fifteen (15) days following the date this Agreement is fully executed by both Parties hereto.

4.2.2 For the purpose of clarity, in the event that the Purchase Price to be paid to Bell by Bigfoot is to be reduced pursuant to Section 4.1.1 (in whole or in part), Bell shall refund to Bigfoot the applicable amount as determined pursuant to Section 4.1.1 within ninety (90) days of request by Bigfoot for such repayment.

4.3 **Taxes.** Bigfoot shall be liable for and shall pay all taxes, including GST, HST, sales, commodity and use tax, gross receipts tax, harmonized and value added tax, and any other tax, penalty, interest and or other amount due, imposed or payable on or in connection with its purchase of the Purchased Trademarks and the Domain Name, excluding any taxes payable by Bell on its income and capital gains;

4.3.1 In the event that Bigfoot is required to pay any withholding tax or other amount(s) due in lieu thereof in respect of the Purchase Price, Bigfoot shall gross-up the amount paid to Bell by the amount required to completely off-set the amount of the withholding tax paid by Bigfoot.

**5.0 Obligations of Bigfoot.**

5.1 **Restrictions on Use.** Except as expressly authorized by Bell otherwise, Bigfoot shall not:

5.1.1 use, advertise or display any Purchased Trademark (or any confusingly similar trademark) in Canada in association with (i) any goods or services in association with which said trademark is registered (in Canada or elsewhere), (ii) in association with which said trademark is used by or for Bigfoot (or any Bigfoot Party) in Canada or elsewhere or (iii) any goods or services directly ancillary or related to either of the foregoing;

3

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5.1.2 without limiting the generality of the foregoing, produce or directly broadcast or distribute (by any means) in, to, or for Canada, any Fashion Television Programming or Content branded with any Purchased Trademark (or any confusingly similar trademark);

5.1.3 authorize or knowingly permit any Person (including any Bigfoot Party) to do any of the foregoing.

5.2 Reservation. For the purpose of clarity, notwithstanding the prohibitions in Section 5.1, none of the following shall be considered to be a breach of the terms and conditions of this Agreement by Bigfoot:

5.2.1 the "spill over" or other indirect availability in Canada of any Fashion Television Programming or Content produced, broadcast or distributed by or for Bigfoot (or any Bigfoot Party) branded with any Purchased Trademark (or any confusingly similar trademark) by means of over the air, cable, satellite, computer, online or other form of broadcast, transmission or distribution, provided that such programming or content or the broadcast, transmission or distribution thereof does not originate in Canada or is not specifically targeted at Canada or Canadians; and

5.2.2 the accessibility from Canada of any website or social media account owned or operated by or for Bigfoot (or any Bigfoot Party) featuring Fashion Television Programming or Content produced, broadcast or distributed by or for Bigfoot (or any Bigfoot Party) branded with any Purchased Trademark (or confusingly similar trademark) provided that such programming or content, or the distribution thereof, does not originate in Canada or is not specifically targeted at Canada or Canadians.

5.3 Website.

5.3.1 Bigfoot shall, in a manner approved by Bell, implement the use of geo-filtering technology on (i) any website owned or operated by or for Bigfoot (or any Bigfoot Party) associated with the Domain Name and (ii) any other website(s) (or subsite(s) thereof) owned or operated by or for Bigfoot (or any Bigfoot Party) featuring Fashion Television Programming or Content produced or distributed by or for Bigfoot (or any Bigfoot Party) branded with any Purchased Trademark (or confusingly similar trademark) to direct users or visitors to such website(s) (or subsite(s)) who are from Canada (as indicated by their IP address) to website(s) (or subsite(s)) identified by Bell and to direct users who are from outside of Canada to website(s) (or subsite(s)) identified by Bigfoot and shall cause any Bigfoot Party that operates any website (or subsite) or social media site containing or providing access to such programming or content to do likewise.

5.3.2 Except as agreed between the Parties otherwise, no later than thirty (30) days following execution of this Agreement by Bell, Bigfoot shall remove (or cause the removal) from any website(s) (or subsite(s)) owned or operated by or for Bigfoot (or any Bigfoot Party) featuring Fashion Television Programming or Content all Fashion Television Programming or Content produced, broadcast or distributed by or for Bell (or any Bell Party).

5.4 Recordation.

5.4.1 Bigfoot shall be responsible, at its sole cost, for the recordation of:

5.4.1.1 the assignment of the Purchased Trademarks including, without limitation, all Short Form Assignments and any other documentation it believes necessary or desirable to effect the assignment of the Purchased Trademarks to Bigfoot; and

5.4.1.2 all documentation required to update the current title of any Remaining Trademark from any prior Bell entity or Affiliate to reflect ownership thereof by Bell Media Inc.;

5.4.2 Bigfoot shall use its best efforts to secure recordation of the assignment of all registrations of the Purchased Trademarks to Bigfoot forthwith.

4

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5.5 Bell Name and Bell Trademarks. Bigfoot shall not, without Bell's express prior authorization, knowingly use in any communication with any Person :

5.5.1 the name Bell Media Inc. or the name of any Affiliate thereof; or

5.5.2 any trademark owned by Bell (or any Affiliate thereof)

nor shall it authorize or knowingly permit any Person (including any Bigfoot Party) to do so.

5.6 Bigfoot Parties. Bigfoot agrees that:

5.6.1 it shall require all Bigfoot Parties to observe and abide by Sections 5.1., 5.3, 5.5, 5.7, 5.8.2, 5.9, 5.11 and 5.12 of this Agreement (including all applicable subsections thereof); and

5.6.2 that any breach by any Bigfoot Party of the terms and conditions of the Sections of this Agreement identified in Section 5.6.1 of this Agreement (including any subsection thereof) shall be deemed to be a breach by Bigfoot of the terms and conditions of such Section(s) (and/or subsection(s)).

5.7 Business Practices. Bigfoot shall not make any false or misleading statements regarding the ownership of any Purchased Trademark or the role of Bell in any enforcement steps or actions undertaken by or for Bigfoot (or any Bigfoot Party) in respect of the use or registration by any Person of any Purchased Trademark (or any confusingly similar trademark).

5.8 Proprietary Rights. Bigfoot acknowledges and agrees that:

5.8.1 Bell is the exclusive owner of the Canadian Trademarks and all rights, title and interest therein including the registrations thereof;

5.8.2 Bigfoot shall not contest the use or registration of the Canadian Trademarks or Bell's ownership thereof or assist any other Person (including any Bigfoot Party) in doing so.

5.9 Comfort Letters; Other.

5.9.1 Concurrently with the execution and delivery of this Agreement, Bigfoot shall execute and deliver to Bell the correspondence set out in Schedule "E" ("Comfort Letters") hereof (the "Comfort Letters");

5.9.2 Bigfoot (or any Bigfoot Party as requested by Bell) shall, at Bell's request, execute and deliver any other lawful document provided by Bell (or any other Bell Party) confirming that neither Bell (nor any Bell Party) has authorized or provided any instructions to Bigfoot at any time (including, without limitation, prior to the Effective Date) regarding the enforcement of any Purchased Trademark and/or that all enforcement steps or actions taken by or for Bigfoot (or any Bigfoot Party) in respect of any Purchased Trademark is the sole responsibility of Bigfoot (or any Bigfoot Party).

5.10 Escrow.

5.10.1 Bigfoot shall place into escrow within thirty (30) days of the Effective Date (or such other time as agreed between the Parties) the amount of one million dollars (\$1,000,000.00) (the "Escrow Fund"). The sole purpose of the Escrow Fund will be to pay Bell therefrom any amounts owing to Bell by Bigfoot in connection with its indemnification obligations, to Bell pursuant to Sections 9.1 and 9.2 hereof; and

5

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5.10.2 The Parties shall, within thirty (30) days of the date this Agreement is executed by both Parties hereto (or such other time as agreed between the Parties), enter into an escrow arrangement on commercially reasonable terms and conditions for the secure holding, release to Bell and/or return to Bigfoot of any amounts held in the Escrow Fund (the "Escrow Agreement"). For the purpose of clarity, unless agreed between the Parties otherwise, the Escrow Agreement shall provide that all remaining amounts in the Escrow Fund shall be returned to Bigfoot upon the latest of the following dates (a) the date there is a full, final and conclusive settlement in writing of all claims brought by F.TV Ltd (BVI) and any Person related thereto including any Affiliate thereof (each such Person an "F.TV Party") against Bell (and any Bell Indemnitee) (including, without limitation, the New York Action) in which it is agreed that no F.TV Party has any claim against Bell or any Bell Indemnitee relating to any Purchased Trademark, the use thereof, or any actions relating thereto (including without limitation, any enforcement steps or actions undertaken by or for Bigfoot (or any Bigfoot Party) relating to any Purchased Trademark, the use thereof or the use of any confusingly similar trademark(s), including, without limitation any such steps or actions undertaken by or for Bigfoot (or any Bigfoot Party) prior to the Effective Date hereof, including under the License Agreement and including the New York Action) (ii) the date all such claims (including, without limitation, the New York Action) are fully, finally and conclusively decided by court(s) of competent jurisdiction and no appeal(s) are lodged within the appeal period, and (c) the date following the expiry of the period of time agreed between the Parties in the Escrow Agreement during which no additional such claims are filed or threatened by any F.TV Party against Bell or any Bell Indemnitee.

5.11 European Cancellation Actions. Bigfoot shall fully defend (or cause the applicable Bigfoot Party, if applicable, to defend), at Bigfoot's cost, the European Cancellation Actions using its best efforts to do so. Without limiting the generality of the foregoing, in the event that any European Cancellation Action results in the cancellation of any European Registration, unless, in the opinion of Bigfoot and its trademark counsel and any counsel retained by Bell (at its option and cost) to assess the likelihood successfully appealing such cancellation there is no real possibility of success in appealing such cancellation, Bigfoot shall, at its own cost, appeal the cancellation of any European Registration cancelled pursuant to any European Cancellation Action through all applicable and available levels of appeal using its best efforts to do so, (or shall cause the applicable Bigfoot Party to do so).

5.12 New York Action. Bigfoot shall cooperate with Bell, as reasonably requested by Bell, in good faith in a timely manner, in respect of the defence and/or settlement by Bell of the New York Action and shall cause each Bigfoot Party requested by Bell to do so to do likewise.

#### 6.0 Obligations of Bell

6.1 Restrictions on Use. Except as expressly authorized by Bigfoot otherwise, Bell shall not:

6.1.1 use any Canadian Trademark outside of Canada in association with (i) any goods and/or services in association with which said trademark is registered in Canada, (ii) in association with which said trademark is used by or for Bell or any Bell Party in Canada or (iii) any goods or services directly ancillary or related to either of the foregoing;

6.1.2 without limiting the generality of the foregoing, produce or directly broadcast or distribute outside of Canada, or to or for any jurisdiction outside of Canada, any Fashion Television Programming or Content branded with any Canadian Trademark (or any confusingly similar trademark);

6.1.3 authorize or knowingly permit any other Person (including any Bell Party) to do any of the foregoing.

6

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6.2 Reservation. For the purpose of clarity, notwithstanding the prohibitions in Section 6.1, none of the following shall be considered to be a breach of the terms and conditions of this Agreement by Bell:

6.2.1 the "spill over" or other indirect availability outside of Canada of Fashion Television Programming or Content produced, broadcast or distributed by or for Bell (or any Bell Party) branded with any Canadian Trademark (or confusingly similar trademark) by means of over the air, cable, satellite, computer, online or other forms of broadcast, transmission or distribution, provided that such programming or content or the broadcast, transmission or distribution thereof does not originate primarily outside of Canada or is not specifically targeted at Persons outside of Canada; and

6.2.2 the accessibility outside of Canada of any website or social media account owned or operated by or for Bell (or any Bell Party) featuring Fashion Television Programming or Content produced, broadcast or distributed by or for Bell (or any Bell Party) and branded with any Canadian Trademark provided that such programming or content, or the distribution thereof, does not originate outside of Canada or is not specifically targeted at Persons outside of Canada.

6.3 Website; Domain Name.

6.3.1 Bell shall:

6.3.1.1 implement the use of geo-filtering technology on any website(s) (or subsite(s)) owned or operated by or Bell (or any Bell Party) featuring Fashion Television Programming or Content produced or distributed by or for Bell (or any Bell Party) branded with any Canadian Trademark (or any confusingly similar trademark) to direct users or visitors to such website(s) who are from Canada (as indicated by their IP address) to any Canadian "Fashion Television" website (or subsite) owned or operated by Bell (or any Bell Party) and to direct users who are from outside of Canada (as indicated by their IP address) to website(s) (or subsite(s)) identified by Bigfoot and shall cause any Bell Party that operates any website(s) (or subsite(s)) containing or providing access to such programming or content to do likewise.

6.3.1.2 provide Bigfoot with all domain name and server information necessary to implement the geo-filtering to be undertaken pursuant to Section 5.3.1 prior to the transfer of the Domain Name to Bigfoot;

6.3.1.3 cooperate with Bigfoot, as reasonably requested by Bigfoot, in the transfer of the Domain Name (including, without limitation, by providing all information reasonably required by Bigfoot to effect the transfer of the Domain Name to Bigfoot and executing all reasonable and lawful documents required by Bigfoot to effect the transfer of the Domain Name to Bigfoot.

6.4 Bell Parties. Bell agrees that it shall require all Bell Parties to observe and abide by Sections 6.1, 6.3, 6.5.2 and 6.6 of this Agreement (including all applicable subsections thereof).

6.5 Proprietary Rights. Bell acknowledges and agrees that:

6.5.1 following the sale, assignment and transfer of the Remaining Trademarks to Bigfoot hereunder, Bigfoot shall be the exclusive owner the Purchased Trademarks and all rights, title and interest therein; and

6.5.2 Bell shall not contest the use, registration or ownership of the Purchased Trademarks or assist any other Person (including any Bell Party) in doing so.

7

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**6.6 Further Assurances.**

**6.6.1** Bell agrees that it shall (at Bigfoot's cost) (i) take all reasonable and lawful steps and actions requested by Bigfoot (or any Bigfoot Party) (including executing and delivering of all reasonable and lawful documents provided by Bigfoot or any Bigfoot Party) that are consistent with this Agreement and which are reasonably necessary to give effect to the terms and conditions hereof including, without limitation:

**6.6.1.1** taking any reasonable and lawful steps and actions requested by Bigfoot (or any Bigfoot Party) (including executing and delivering any reasonable and lawful documents provided by Bigfoot or any Bigfoot Party and having such documents notarized, if necessary) that are necessary to record or perfect Bigfoot's title and ownership in and to any Purchased Trademark ;

**6.6.1.2** taking any reasonable and lawful steps and actions requested by Bigfoot (or any Bigfoot Party) (including executing and delivering any reasonable and lawful documents provided by Bigfoot or any Bigfoot Party) required to assist in the registration or maintenance of any Purchased Trademark (including, without limitation, providing such assistance as may be reasonably requested by Bigfoot (or any Bigfoot Party) in defending any European Registration against any European Cancellation Action);

**6.6.2** For the purpose of clarity, while Bell may, in its sole discretion, agree from time to time, if requested to do so by Bigfoot (or any Bigfoot Party), provide Bigfoot (or any Bigfoot Party) assistance in respect of any enforcement steps or actions undertaken by Bigfoot (or any Bigfoot Party) in respect of any Purchased Trademark, Bigfoot expressly acknowledges and agrees that:

**6.6.2.1** the provision of any such assistance (and the nature and amount of any such assistance) shall be at the sole discretion of Bell;

**6.6.2.2** in the event that Bell elects to provide any such assistance, it shall only render such assistance as it deems reasonable in the circumstances (in its sole discretion);

**6.6.2.3** Bigfoot shall be responsible for all costs and expenses incurred by Bell (or any Bell Party) in providing any such assistance and shall pay and/or reimburse Bell (and/or the applicable Bell Party) for such costs and expenses forthwith upon request by Bell; and

**6.6.2.4** nothing in this Agreement shall be deemed as requiring Bell (or any Bell Party) to join, or provide any assistance (of any nature or any amount) in relation to any enforcement steps or actions undertaken by or for Bigfoot (or any Bigfoot Party) or to provide any such assistance which, in the sole opinion of Bell may expose Bell (or any Bell Party) (or any of their respective officers, directors, employees or agents) to liability of any kind.

**7.0 Representations and Warranties**

**7.1** Representations and Warranties of Bigfoot. Bigfoot represents and warrants to Bell as follows (and acknowledges that Bell is relying on such representations and warranties):

**7.1.1** this Agreement has been duly authorized by Bigfoot, and is a legal, valid, and binding obligation of Bigfoot, enforceable against Bigfoot in accordance with its terms;

**7.1.2** the execution and delivery of this Agreement by Bigfoot and the consummation of the transactions herein provided will not result in the breach or violation of any of the provisions of, or constitute default under or conflict with any obligation of Bigfoot under:

**7.1.2.1** any contract to which Bigfoot is a party or by which it is bound;

8

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7.1.2.2 any judgment, decree, order, or award of any court, governmental body or arbitrator having jurisdiction over Bigfoot; or

7.1.2.3 any Applicable Law.

7.1.3 Bigfoot is valid and subsisting under the laws of its jurisdiction, and has full corporate power and authority to execute and deliver this Agreement and to perform its obligations hereunder; and

7.1.4 the execution, delivery and performance of this Agreement has been duly authorized by all necessary corporate action on the part of Bigfoot.

7.2 Representations and Warranties of Bell. Bell represents and warrants to Bigfoot as follows (and acknowledges that Bigfoot is relying on such representations and warranties):

7.2.1 this Agreement has been duly authorized by Bell, and is a legal, valid and binding obligation of Bell, enforceable against Bell in accordance with its terms;

7.2.2 the execution and delivery of this Agreement by Bell and the consummation of the transaction herein provided will not result in the breach or violation of any of the provisions of, or constitute default under or conflict with any obligation of Bell under:

7.2.2.1 any contract to which Bell is a party or by which it is bound;

7.2.2.2 any judgment, decree, order, or award of any court, governmental body or arbitrator having jurisdiction over Bell;

7.2.2.3 any Applicable Law;

7.2.3 Bell is valid and subsisting under the laws of its jurisdiction and has full corporate power and authority to execute and deliver this Agreement and to perform its obligations hereunder; and

7.2.4 the execution, delivery and performance of this Agreement has been duly authorized by all necessary corporate action on the part of Bell.

7.3 Disclaimer. Apart from the representations and warranties expressly set out in Sections 7.1 and 7.2, neither Party makes any other representation or warranty (and there are no other such representations or warranties) of any type or nature including, without limitation, any representations or warranties regarding merchantability, fitness for purpose or non-infringement of any rights of any third Person. All other representations and warranties, whether express or implied, are hereby disclaimed by the Parties to the fullest extent permitted by Applicable Law. The Parties specifically disclaim the United Nations Convention on Contracts for the International Sale of Goods.

7.4 Acknowledgement. Bigfoot expressly acknowledges and agrees that:

7.4.1 all Purchased Trademarks and the Domain Name are sold, assigned and transferred by Bell to Bigfoot "as is, where is" without representation or warranty of any type or nature (including but not limited to any representation or warranty regarding (i) the validity, registrability, enforceability or registration thereof, (ii) the use thereof by or for Bell, or (iii) the non-infringement of any rights of any Person in respect of the use, advertisement or display thereof by or for Bell, Bigfoot (or any Bigfoot Party)); and;

7.4.2 the use, advertisement and/or display of any Purchased Trademarks by or for Bigfoot (or any Bigfoot Party) and the enforcement of any rights in any Purchased Trademarks by or for Bigfoot (or any Bigfoot Party) is at the sole risk and liability of Bigfoot.

9

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**8.0 Infringement and IP Claims.**

**8.1 Infringement.**

8.1.1 Each Party has the exclusive right and option (exercisable in its sole discretion, at its sole expense and for its sole benefit) to take such steps or actions as it deems necessary or desirable in respect of any infringement, violation or misappropriation of any trademark subject of this Agreement in which it has an ownership interest or the registration of any confusingly similar trademark.

8.1.2 Any Party taking enforcement steps or actions in respect of any trademark subject of this Agreement in which it has an ownership interest or who opposes the registration of any confusingly similar trademark, shall, at the request of the non-enforcing Party, keep the non-enforcing Party apprised of material developments in such enforcement activity or opposition in a timely manner.

8.1.3 No Party taking enforcement steps or actions in respect of any trademark subject of this Agreement in which it has an ownership interest or who opposes the registration of any confusingly similar trademark shall settle such enforcement action or opposition in a manner which will have (or is likely to have) a material adverse impact or limitation on the use of any trademark subject of this Agreement in which the non-enforcing Party has an ownership interest, or which incurs any obligation on the non-enforcing Party (including the payment of any money) without the prior written consent of the non-enforcing Party (which shall not be unreasonably withheld, conditioned or delayed).

8.1.4 Bigfoot acknowledges and agrees that Bell has neither authorized nor provided any instructions to Bigfoot at any time (including, without limitation, prior to the Effective Date) regarding the enforcement of any Purchased Trademark against any Person in any jurisdiction.

**8.2 IP Claims.**

8.2.1 Any Party receiving notice of any threatened or actual claim that alleges that the use by any Party of any trademark subject of this Agreement in which either Party has an ownership interest infringes, violates or misappropriates the intellectual property rights of any Person (an "IP Claim") shall, in a timely fashion (in the event of any threatened IP Claim) or immediately (in the event of an actual IP Claim), advise the other Party of such IP Claim. Such notification shall provide all known particulars and all relevant documents (including, without limitation, copies of any communications from the plaintiff/complainant or its counsel) which are pertinent to the IP Claim.

8.2.2 Subject to the terms and conditions of this Agreement (including, without limitation, the indemnification provisions of Article 9) any Party subject to an IP Claim shall be solely responsible for (i) defending and/or settling such IP Claim, (ii) all of its costs and expenses incurred in the defence and/or settlement of such IP Claim and (iii) all losses (if any) relating to or arising directly or indirectly from or out of or in connection with such IP Claim.

8.2.3 Any Party defending an IP Claim shall, at the request of the non-defending Party, keep the non-defending Party apprised of material developments in the defence and/or settlement of the IP Claim in a timely manner.

8.2.4 No Party defending any IP Claim shall settle such IP Claim in a manner which will have (or is likely to have) a material adverse impact or limitation on the use or registration of any trademark subject of this Agreement in which the non-defending Party has an ownership interest, or which imposes any obligation on the non-defending Party (or any Affiliate or licensee thereof) (including, without limitation, the payment of any money) without the prior written consent of the non-defending Party (which shall not be unreasonably withheld, conditioned or delayed).

10

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**9.0 Indemnification and Limitation of Liability**

**9.1 Bigfoot Indemnity.** Bigfoot shall, and does hereby, fully and completely defend, indemnify and hold Bell and all Bell Parties (including, without limitation, their respective officers, directors, employees and agents) (the "Bell Indemnitees") hereunder from and against any and all Claims and Losses relating to or arising directly or indirectly from, in connection with, or out of the following (each such Claim an "Indemnified Claim"):

**9.1.1** any breach (or deemed breach) by Bigfoot of any term or condition of this Agreement or any misrepresentation made by Bigfoot;

**9.1.2** any, illegal, fraudulent, wrongful, negligent or willful act or omission of Bigfoot in the exercise of its rights and performance of its obligations under this Agreement (or, prior to the Effective Date of this Agreement, the License Agreement), or in the operation of its business (including the use, advertisement or display of any Purchased Trademark or any confusingly similar trademark including, without limitation, prior to the Effective Date of this Agreement);

**9.1.3** any illegal, fraudulent, wrongful, negligent or willful act or omission of any Bigfoot Party in the operation of its business (including the use, advertisement or display of any Purchased Trademark or any confusingly similar trademark or any misrepresentation made by such Bigfoot Party) including, without limitation, prior to the Effective Date of this Agreement;

**9.1.4** any failure of Bigfoot to comply with any Applicable Law in respect of the exercise of its rights or performance of its obligations under this Agreement (or, prior to the Effective Date of this Agreement), the License Agreement or in the operation of its business (including the use, advertisement or display of any Purchased Trademark or any confusingly similar trademark and including prior to the Effective Date of this Agreement);

**9.1.5** any failure of any Bigfoot Party to comply with any Applicable Law in respect of operation of its business (including the use, advertisement or display of any Purchased Trademark or any confusingly similar trademark including, prior to the Effective Date of this Agreement);

**9.1.6** any allegation by any Person that the use, advertisement or display of any Purchased Trademark (or, prior to the Effective Date of this Agreement), any rights acquired in connection with the License Agreement, (or any confusingly similar trademarks) by or for Bigfoot (or any Bigfoot Party) constitutes an infringement, violation or misappropriation of the intellectual property rights of that or another Person including prior to the Effective Date of this Agreement;

**9.1.7** any steps or actions taken by or for Bigfoot (or any Bigfoot Party) to defend or enforce any rights in any Purchased Trademark (or any confusingly similar trademarks) including, without limitation, the issuance of any demand correspondence or the commencement of any legal or administrative proceedings (including, without limitation, any opposition or cancellation proceedings) and including any such steps or actions taken (in whole or in part) prior to the Effective Date of this Agreement; and

**9.1.8** any steps or actions taken against any Bell Indemnitee(s) (including any legal or administrative actions commenced against any Bell Indemnitee(s)) relating to or arising directly or indirectly from, out of, or in connection with any steps or actions taken by or for Bigfoot (or any Bigfoot Party) to defend or enforce any rights in any Purchased Trademark (or, prior to the Effective Date of this Agreement, any rights acquired in connection with the License Agreement), (or any confusingly similar trademarks) including, without limitation, any such steps or actions taken (in whole or in part) prior to the Effective Date of this Agreement.

9.2 Acknowledgement. Bigfoot expressly acknowledges and agrees that, notwithstanding the Effective Date of this Agreement, it shall, and does hereby, fully and completely defend, indemnify and hold all Bell Indemnitees harmless from and against any and all Claims and Losses relating to or arising directly or indirectly from, in connection with or out of the following regardless of whether such Indemnified Claim or the facts giving rise to such Indemnified Claim arose or commenced (in whole or in part) prior to the Effective Date of this Agreement:

9.2.1 any steps or actions undertaken by or for Bigfoot (or any Bigfoot Party) relating to the enforcement of any rights in any Purchased Trademark which took place (in whole or in part) prior to the Effective Date (including, without limitation, any steps or actions undertaken by or for Bigfoot (or any Bigfoot Party) pursuant to the License Agreement;

9.2.1.1 any steps or actions taken against any Bell Indemnitee(s) (including any legal or administrative actions commenced against any Bell Indemnitee(s)) relating to or arising directly or indirectly from, out of, or in connection with any steps or actions taken by or for Bigfoot (or any Bigfoot Party) to defend or enforce any rights in any Purchased Trademark (or, prior to the Effective Date of this Agreement, any rights acquired in connection with the License Agreement), (or any confusingly similar trademarks) including, without limitation, any such steps or actions taken (in whole or in part) prior to the Effective Date of this Agreement.

9.2.2 all enforcement steps or actions undertaken by or for Bigfoot (or any Bigfoot Party) against Fashion TV Programmgesellschaft GmbH (or any Affiliate thereof) or F.TV Ltd (BVI) (and any Affiliate thereof); and

9.2.3 Southern District of New York civil action 14 CV 9856 (F.TV Ltd (BVI) v. Bell Media Inc.) (the "New York Action").

9.3 Indemnification Procedure. Except as otherwise set out herein (or except as may be agreed between the Parties otherwise):

9.3.1 Any Party receiving notice of any threatened or actual Indemnified Claim shall, in a timely fashion (in the event of any threatened Indemnified Claim) or immediately (in the event of an actual Indemnified Claim), advise the other Party of that Indemnified Claim, with all known particulars and all relevant documents (including, without limitation, copies of any communications from the plaintiff/complainant or its counsel) pertinent to the Indemnified Claim.

9.3.2 Bigfoot shall defend and/or settle any Indemnified Claim pursuant to and in accordance with the terms and conditions of this Agreement using counsel of its own choosing and its best efforts to do so.

9.3.3 Bigfoot shall be solely responsible for all costs and expenses it incurs in the defence and/or settlement of any Indemnified Claim and for all Losses incurred by any Bell Indemnitee(s) subject of said Indemnified Claim relating to, or arising directly or indirectly from, in connection with or out of such Indemnification Claim.

9.3.4 Bigfoot (and its counsel) shall (i) reasonably consult with any Bell Indemnitee subject of an Indemnified Claim regarding the defence and/or settlement of such Claim, (ii) shall keep any such Bell Indemnitee apprised of material developments in the defence and/or settlement of such Indemnified Claim in a timely manner and (iii) shall allow such Bell Indemnitee to participate in the defence and/or settlement of such Indemnification Claim.

9.3.5 Bigfoot shall not settle any Indemnified Claim without the prior written consent of the affected Bell Indemnitee(s) (which shall not be unreasonably withheld, conditioned or delayed). For the purpose of clarity, notwithstanding the foregoing, no Bell Indemnitee(s) shall be required to consent to the settlement of any Indemnified Claim:

12

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9.3.5.1 In any manner which will have (or is likely to have) a material adverse impact or limitation on the use or registration of any trademark subject of this Agreement in which such Bell Indemnitee(s), Bell (or any Affiliate thereof) has an ownership interest;

9.3.5.2 In any manner which requires any limitation or restriction on the actions, business or operations of such Bell Indemnitee(s), Bell or any Bell Party;

9.3.5.3 In any manner which requires any admission of any guilt or liability by such Bell Indemnitee(s), Bell or any Bell Party, or;

9.3.5.4 In any manner which requires the payment of any money by such Bell Indemnitee(s), Bell or any Bell Party.

9.3.6 Notwithstanding Section 9.3.2:

9.3.6.1 any Bell Indemnitee subject to an Indemnified Claim shall have the right (at Bigfoot's expense) to retain counsel of its own choosing ("Bell Counsel") to advise it regarding such Indemnified Claim and to fully participate in the defence and/or settlement of such Indemnified Claim without in any way reducing or replacing the defence and indemnity obligations of Bigfoot in this Article 9;

9.3.6.2 any Bell Indemnitee subject to an Indemnified Claim shall have the option (exercisable in its sole discretion) to assume the direction and control of the defense and/or settlement of any Indemnified Claim (including, without limitation, by appointing Bell Counsel to continue the defence and/or settlement of such Indemnified Claim);

9.3.6.3 Bell has the right to exercise, direct and control the defence and/or settlement of the New York Action using Bell Counsel (at Bigfoot's expense);

9.3.7 For the purpose of clarity:

9.3.7.1 In the event that any Bell Indemnitee assumes direction and control of the defence and/or settlement of any Indemnified Claim pursuant to 9.3.6.2:

9.3.7.1.1 Except with regard to the New York Action or except if Bigfoot fails or refuses to indemnify, defend and hold the affected Bell Indemnitee(s) harmless in accordance with the terms and conditions of this Agreement, Bell or such Bell Indemnitee shall assume responsibility for all further costs and expenses incurred by it in the defence and/or settlement of such Indemnified Claim (excluding any Losses that may be incurred by any Bell Indemnitee(s) relating to, or arising directly or indirectly from, out of, or in connection with such Indemnified Claim which shall remain the exclusive responsibility of Bigfoot);

9.3.7.1.2 Bigfoot shall cooperate with such Bell Indemnitee (at the expense of Bell or such Bell Indemnitee) as reasonably requested by such Bell Indemnitee in good faith in a timely manner (and shall cause each Bigfoot Party requested to do so by Bell to do so);

9.3.7.1.3 the Bell Indemnitee assuming such direction and control shall keep Bigfoot advised of material developments in respect of the defence and/or settlement of such Indemnified Claim;

9.3.7.1.4 the Bell Indemnitee assuming direction and control of the Indemnified Claim shall not settle such Indemnified Claim in a manner which will have (or is likely to have) a material or adverse impact or limitation on the use and registration of any trademark subject of this Agreement in which Bigfoot (or any Bigfoot Party) has an ownership interest or which imposes any obligation on Bigfoot (or any Bigfoot Party) (including, without limitation, the payment of any money) without the prior written consent of Bigfoot (which shall not be unreasonably withheld, conditioned or delayed).

13

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9.3.7.2 **New York Action.** Bigfoot shall be responsible for all costs and expenses incurred by Bell (and any other Bell Indemnitee(s)) in the defence and/or settlement of the New York Action (including, without limitation, any Losses that may be incurred by Bell or any Bell Indemnitee(s) relating to, or arising directly or indirectly from, out of, or in connection with the New York Action). Bigfoot shall pay and/or reimburse Bell for all costs and expenses incurred by Bell (or any other Bell Indemnitee(s)) in the defence and/or settlement of the New York Action forthwith upon request by Bell.

9.4 **Limitation of Liability.** To the maximum extent permitted under Applicable Law, under no circumstances, shall Bell or any Bell Party (or any of their respective officers, directors, employees or agents) be liable to Bigfoot or any Bigfoot Party (or any of their respective officers, directors, employees or agents) for damages of any type incurred by such Person relating to or arising directly or indirectly from, in connection with or out of this Agreement in any manner (including, without limitation, the exercise by any party of its rights under this Agreement or the performance of its obligations hereunder, the Purchased Trademarks, or the use advertisement or display thereof) or the Domain Name including without limitation, any direct, indirect, incidental, special, or consequential damages, or damages of any type in the nature of lost profits, lost revenue or loss of use, whether or not arising in contract (including fundamental breach), tort (including negligence), strict liability or other legal or equitable theory, whether or not it was advised of the possibility of such damages and/or whether or not such damages were foreseeable. For the purpose of clarity, Bigfoot acknowledges and agrees that the limitation of liability in this Section 9.4 is reasonable and reflects the agreed upon allocation of risk between the Parties.

**10.0 Confidentiality.**

10.1 **Protection of Confidential Information.** Each Receiving Party of Confidential Information of a Disclosing Party agrees that it shall not:

10.1.1 use Disclosing Party's Confidential Information for any purpose other than for the purpose of performing its obligations and exercising its rights under this Agreement or as otherwise permitted under this Agreement, or

10.1.2 copy or otherwise reproduce Disclosing Party's Confidential Information, or disclose, disseminate or otherwise communicate in whole or in part, Disclosing Party's Confidential Information to any Person except as is otherwise permitted under this Agreement, provided, however, that:

10.1.2.1 any disclosure of Disclosing Party's Confidential Information may be made to the officers, directors and employees of the Receiving Party and their legal and financial advisors, who need to know such Confidential Information;

10.1.2.2 any disclosure of Disclosing Party's Confidential Information may otherwise be made to such Persons to which the Disclosing Party gives its prior consent in writing (subject to such limitations and restrictions imposed by the Disclosing Party)(such disclosure which shall not be unreasonably withheld, conditioned or delayed, if reasonably required by Bigfoot for the purpose of settling any Indemnified Claim);

10.1.2.3 Bell shall be entitled to freely disclose as it sees fit (i) the Comfort Letters, (ii) any document executed and Delivered by Bigfoot (or any Bigfoot Party) pursuant to Section 5.9.2 and (iii) the fact that it has sold, assigned and transferred the Purchased Trademarks and the Domain Name to Bigfoot; and

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10.1.2.4 Bigfoot shall be entitled to disclose this Agreement (and/or the License Agreement) without the consent of Bell to (i) any Bigfoot Party, or (ii) any Person who purchases all or substantially all of the assets or shares of Bigfoot, or (iii) any Person who purchases any Purchased Mark(s), or (iv) pursuant to any enforcement steps or actions undertaken by or for Bigfoot (or any Bigfoot Party) against any other Person, or (v) pursuant to discussions regarding the settlement of any Indemnified Claim provided that, (vi) Bigfoot shall advise Bell of its intent to disclose this Agreement (and/or the License Agreement) at least five (5) Business Days prior to disclosure thereof by Bigfoot, and (vii) Bigfoot shall comply with all reasonable limitations requested by Bell on such disclosure (including, without limitation, disclosure pursuant to confidentiality or non-disclosure covenants or redaction of the Purchase Price or other information).

10.2 Undertakings from Persons. Each Person to whom Disclosing Party's Confidential Information is disclosed in accordance with subsection 10.1.2.2 hereof shall:

10.2.1 be informed by the Receiving Party of the confidential nature of Disclosing Party's Confidential Information; and

10.2.2 undertake to treat Disclosing Party's Confidential Information in accordance with the provisions of this.

10.3 Safeguarding of Confidential Information. Receiving Party agrees that it shall safeguard the Confidential Information from disclosure to anyone other than as permitted hereby and, at a minimum, use efforts commensurate with those that the Receiving Party employs for protecting the confidentiality of corresponding Information of its own which it does not desire to disclose or disseminate, but in no event less than reasonable care.

10.4 Mandatory Disclosure. In the event that the Receiving Party becomes legally compelled by Applicable Law to disclose any of the Disclosing Party's Confidential Information (including this Agreement and/or the License Agreement, in whole or in part), it shall provide Disclosing Party with prompt prior written notice of such requirements so that the Disclosing Party may seek a protective order or other appropriate remedy and/or waive compliance with the terms of this Agreement, which waiver may not be unreasonably withheld, conditioned or delayed. In the event that such protective order or other remedy is not obtained, or that the Disclosing Party waives compliance with the provisions hereof, the Receiving Party agrees to furnish only that portion of the Confidential Information which is legally required.

10.5 Return of Confidential Information. All Confidential Information made available hereunder, including copies thereof, shall be returned or destroyed upon the first to occur of (i) termination of this Agreement or (ii) request by the Disclosing Party. Each Party may retain, however, subject to the terms of this Article 10, copies of the Confidential Information required for, and shall use such copies only for, compliance with its quality assurance requirements and records retention policy. Each Party, if requested by the other Party, shall deliver a certificate from one of their officers evidencing compliance with this Article 10.

10.6 Exceptions. Notwithstanding anything to the contrary herein, the following will not constitute Confidential Information for the purposes of this Agreement:

10.6.1 Disclosing Party's information that the Receiving Party can show, by documented and compelling evidence, was rightfully known by it prior to the disclosure thereof to it; or

10.6.2 Disclosing Party's information that is or becomes generally available to the public other than as a result of a disclosure directly or indirectly by the Receiving Party in breach of this Agreement; or

15

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10.6.3 Disclosing Party's information that is or becomes available to the Receiving Party on a non-confidential basis from a source other than the Disclosing Party, provided that such source is not known by the Receiving Party to be subject to any prohibition against transmitting the information to the Receiving Party; or

10.6.4 Disclosing Party's information that the Receiving Party can show, by documented and compelling evidence, to have been developed independently by the Receiving Party without using the Confidential Information of the Disclosing Party; or

10.6.5 Disclosing Party's information for which the Disclosing Party in writing has authorized disclosure or any other use.

#### 11.0 Term and Termination.

11.1 Term. This Agreement is effective as of, and comes into force upon, the Effective Date and shall continue in force and effect unless and until terminated in accordance with the terms and conditions hereof.

11.2 Termination. Bell shall have the right to terminate this Agreement (and the assignment set out herein at any time) as follows:

11.2.1.1 In the event of a breach by Bigfoot of any one of the following Sections of this Agreement: 4.2.1, 5.9.2, 5.10.1, 5.10.2, and 5.12;

11.2.1.2 In the event of a failure by Bigfoot to indemnify, defend and hold any Bell Indemnitee(s) harmless against any Indemnified Claim listed in Sections 9.1.6, 9.1.7, or 9.1.8 (including, without limitation, in accordance with the provisions of Section 9.3) provided that all monies in the Escrow Fund have been disbursed to the Bell Indemnitee(s), Bell or any Bell Party pursuant to Escrow Agreement; and

11.2.1.3 For the purpose of clarity:

11.2.1.3.1 Bell shall only be permitted to terminate this Agreement for breach by Bigfoot of Section 5.12 in the event that the breach (or alleged breach) of said section is a material breach;

11.2.1.3.2 Bell shall, in the event of a material breach (or alleged material breach) by Bigfoot of the provisions of Section 5.12, give Bigfoot written notice of such material breach (or alleged material breach). Bigfoot shall have thirty (30) days from such notification (or such other time as agreed between the Parties) to cure such breach to the satisfaction of Bell (acting reasonably and in good faith) before Bell is entitled to terminate this Agreement for material breach by Bigfoot of said Section.

11.3 Effect of Termination. In the event that Bell terminates this Agreement pursuant to Section 11.1 hereof, Bigfoot shall immediately (i) cease all use, advertisement or display of the Purchased Trademarks (and any confusingly similar trademark), (ii) cause all Bigfoot Parties to do likewise, and (iii), at the request of Bell, promptly assign and transfer to Bell the Purchased Trademarks and (any confusingly similar trademark(s) owned by Bigfoot or any Bigfoot Party) and the Domain Name (the "Termination Remedy"). For the purpose of clarity, the Termination Remedy is in addition to and does not exclude any other remedy available to Bell under Applicable Law in the event of a breach by Bigfoot of any term or condition of this Agreement.

#### 12.0 Dispute Resolution

12.1 Internal Resolution of Disputes / Mediation. The Parties shall act honestly and reasonably in interpreting this Agreement. In the event of a dispute or alleged breach of this Agreement, the Parties agree to work together in good faith to resolve the matter internally. If the Parties cannot resolve a dispute within thirty (30) days (or such other time as the Parties may agree), then the Parties may (if both Parties agree) appoint a mediator and to use a mutually agreed process of mediation. The Parties shall share the costs of any mediator and

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the process of mediation (provided that each Party will be responsible for its own costs of preparing for and appearing before the mediator). The decision of the mediator will not be binding on the Parties, but the Parties agree that each shall act in good faith while the process of mediation is proceeding.

12.2 Continued Performance. The Parties shall continue the performance of their respective obligations that are not the subject of dispute during the resolution of any good faith dispute or disagreement, unless and until this Agreement is terminated or expires in accordance with its terms and conditions.

12.3 Equitable Relief. Notwithstanding the provisions of this Article 12, each Party shall retain the right and nothing shall prevent either Party from seeking immediate injunctive relief if, in its business judgment, such relief is necessary to protect its interests prior to utilizing or completing the dispute resolution processes described in this Article 12.

13.0 General.

13.1 Entire Agreement. This Agreement (along with the Escrow Agreement and the Prior Assignment Agreements) constitutes the entire agreement between the Parties regarding the subject matter hereof and replaces all prior agreements and understandings between the Parties regarding the subject matter hereof.

13.2 Assignment.

13.2.1 Subject to the provisions of this Section 13.2., neither this Agreement (including the rights and obligations hereunder) in whole or in part, or any trademark subject of this Agreement in which a Party has an ownership interest, may be sold, assigned or transferred (including by way of change of Control or merger) without the prior written consent of the other Party (which shall not be unreasonably withheld, conditioned or delayed);

13.2.2 Notwithstanding Subsection 13.2.1, either Party may assign this Agreement (including its rights and obligations hereunder) in whole or in part, or any trademark in which such Party has an ownership interest to (i) an Affiliate or (ii) Person who purchases all or substantially all of the shares or assets of said Party without the prior written consent of the other Party;

13.2.3 Notwithstanding Subsections 13.2.1 and 13.2.2, no assignment of this Agreement (including any rights and obligations hereunder) in whole or in part, or any trademark in which such Party has an ownership interest shall be effective unless and until the proposed assignee agrees in writing with the non-assigning Party to be bound, in its own name, by the terms and conditions of this Agreement;

13.2.4 Notwithstanding Subsections 13.2.1, 13.2.2, and 13.2.3, no assignment of this Agreement (including any rights and obligations hereunder) in whole or in part, or any trademark in which such Party has an ownership interest shall relieve the assigning Party of its obligations to the other Party hereunder.

13.3 Force Majeure. Neither Party shall be responsible for damages caused by delay or failure to perform or observe any covenant, undertaking, obligation or condition hereunder when such delay or failure is due to acts of God, inevitable accident, fire, flood, lockout or strike, riot or civil unrest, wars, acts of public authorities (including law enactment, regulation, rule, order, etc.), or other cause of similar or different nature beyond the control of that Party.



13.4 **Relationship of the Parties.** Each Party hereto is an independent contractor and, as such, has no authority to bind or commit the other. This Agreement shall not be construed and does not create a joint venture, employment, partnership or agency relationship between the Parties for any purpose.

13.5 **Notice.** Any notice required under this Agreement by a Party to the other shall be in writing and sent to the address indicated below (as appropriate). Any notices given under this Agreement are deemed to be received as follows:

13.5.1 on the date on which it was delivered, if delivered by hand, or;

13.5.2 on the second Business Day following the sending thereof, if delivered by overnight courier.

Notices to be given under this Agreement shall be sent to the following addresses:

If to Bigfoot: 246 West Broadway  
New York, New York  
USA 10013  
Attention: Mick Gleissner

If to Bell: 299, Queen Street West,  
Toronto, Ontario  
M5V 2Z5  
Attention: Senior Vice-President - Legal & Regulatory

with a copy to: Assistant General Counsel - Trademarks  
1, Carrefour Alexander Graham Bell  
Building A7  
Montreal, Quebec  
H3E 3B3

13.6 **Severability.** If any provision of this Agreement is held to be invalid or unenforceable, such provisions shall be severed and the remaining provisions shall continue in force and effect unaffected to the full extent permitted under Applicable Law.

13.7 **No Waiver.** The Parties recognize that failure or delay on the part of the other Party to exercise a right, power or privilege under this Agreement shall not operate as a waiver thereof, and that any exercise of a right, power or privilege in whole or in part, shall not preclude any other future exercise thereof.

13.8 **Execution.** This Agreement may be executed and delivered in counterparts, and whether delivered by hand, mail, or electronic means (including PDF), each will be deemed an original, and all of which taken together will constitute one and the same instrument.

18

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13.9 Governing Law. This Agreement shall be governed by and interpreted according to the laws of the Province of Ontario and the federal laws of Canada applicable therein. The Parties hereby agree to the exclusive jurisdiction of the courts located in the City of Toronto, in the Province of Ontario in respect of any dispute arising in respect of the Agreement.

13.10 Publicity and Corporate Identification. Except as set out otherwise herein, each Party shall submit to the other Party for prior approval in writing, all press releases and other publicity matters regarding this Agreement and the transactions set out herein (such approval which may be withheld at the option of either Party).

13.11 Amendment. This Agreement may not be amended except by written instrument signed by both Parties.

13.12 Time is of the Essence. Time is of the essence in any manner relating to the performance of this Agreement.

13.13 Remedies Cumulative. No single or partial exercise of any right or remedy under this Agreement shall preclude any other or further exercise of any other right or remedy in this Agreement or as provided under Applicable Law. Unless and except otherwise expressly provided in this Agreement, rights and remedies provided in this Agreement are cumulative and non-exclusive of any right or remedy provided under Applicable Law.

13.14 Survival. The following terms and conditions shall survive the termination of this Agreement: 2.1, 4.3, 4.3.1, 5.1, 5.5, 5.7, 5.8, 5.9.2, 5.10, 5.12, 9.1, 9.2, 9.3, 9.4, 10.1, 10.2, 10.3, 10.4, 10.5, 11.3, 12.9.

WHEREFORE, the Parties have caused this Agreement to be executed and delivered by their respective and duly authorized officers to become effective upon execution and delivery by both Parties.

Signed at Toronto, Ontario

Signed at New York

BELL MEDIA INC.

BIGFOOT ENTERTAINMENT INC.

Name: Kevin Assaraf  
Title: Senior Vice President / Legal & Regulatory

Michael Gleissner, President  
*have the authority to bind the Corporation*

Name : \_\_\_\_\_  
Title : \_\_\_\_\_

SCHEDULE "A" - Trademarks

	Title	Trademark
1.	FASHION TELEVISION	FASHION TELEVISION
2.	Bigfoot FASHION TELEVISION & Design	
3.	Bigfoot FASHIONTELEVISIONCHANNEL & Design	
4.	FASHION TELEVISION THE CHANNEL Design	
5.	Bigfoot FASHION TELEVISION CHANNEL & Design	
6.	FASHION TELEVISION THE CHANNEL	FASHION TELEVISION THE CHANNEL
7.	FASHION TELEVISION Design	
8.	Bigfoot FASHION TELEVISION Design	

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**SCHEDULE "B" - Definitions**

**1.0 Definitions**

- 1.1 "Affiliate" means (i) any Person who directly or Indirectly, through any number of other Person(s) or otherwise, Controls, is Controlled by or is under common Control with the designated Person, and (ii) in the case of Bigfoot additionally (A) FTIL, (B) FTA, (C) Fashion Television S.A. (Luxemburg), (D) Fashion Television International S.A. (Luxemburg) Irrespective of whether such entities fall within the provisions of (i) hereof. A Person shall only be considered an Affiliate of a Party hereto for the purpose of this Agreement if, at the applicable time, it either Controls, is Controlled by, or is under common Control with, such Person;
- 1.2 "Agreement" means this agreement entitled Trademark Assignment Agreement including the recitals and Schedules hereto as it may be amended from time to time;
- 1.3 "Applicable Law" means all laws, statutes, rules, regulations, by-laws, Judgments, orders, decisions, rulings or awards, and general principles of common and civil law and equity, binding on or affecting the Person or matter(s) referred to in the context in which the word is used;
- 1.4 "Bell" means Bell Media Inc.;
- 1.5 "Bell Counsel" has the meaning set out in Section 9.3.4;
- 1.6 "Bell Party" means (i) any Affiliate of Bell (ii) any licensee of Bell (or any Affiliate thereof) licensed by Bell (or any Affiliate thereof) to use or otherwise exploit any Canadian Trademark and (iii) any Person engaged or licensed by Bell (or any Affiliate thereof) to produce, broadcast or distribute (by any means) any Fashion Television Programming or Content;
- 1.7 "Bigfoot" mean Bigfoot Entertainment Inc.;
- 1.8 "Bigfoot Party" means (i) any Affiliate of Bigfoot and (ii) any licensee of Bigfoot or any Affiliate thereof licensed by Bigfoot (or any Affiliate thereof) to use or otherwise exploit any Purchased Trademark and (iii) any Person engaged or licensed by Bigfoot (or any Affiliate thereof) to produce, broadcast or distribute (by any means) any Fashion Television Programming or Content;
- 1.9 "Business Day" means any day other than (i) a Saturday or Sunday or (ii) any statutory or civic holiday generally observed in Toronto, Ontario;
- 1.10 "Canadian Trademarks" means the trademarks set out in Schedule "G" including the registrations thereof and all common law rights therein;
- 1.11 "Claim" means any claim, demand, action, cause of action, suit, arbitration, proceeding, complaint including any appeal or application for review;
- 1.12 "Comfort Letters" has the meaning set out in Section 5.9.1;
- 1.13 "Confidential Information" includes any information which is either non-public, confidential or proprietary in nature, or that is treated as being confidential by a Party and/or by any of its Affiliates or licensees, and that is furnished or transferred by or on behalf of such a Party and/or any of its Affiliates or licensees (collectively, the "Disclosing Party") to the other Party and/or any of its Affiliates or licensees (collectively, the "Receiving Party"), whether the information is or has been conveyed orally or in written or other tangible form, and whether such information is acquired directly or indirectly such as in the course of discussions or other investigations by the Receiving Party, including, but not limited to, trade secrets and technical, financial and business information and models, data, customer information, ideas, concepts, know-how, corporate strategies, reports, plans, techniques, business requirements, specifications, software and programs, documentation,
- 21

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confidential background intellectual property or any other data relating or belonging to the Disclosing Party that is considered and treated as being confidential by the Disclosing Party. Confidential Information disclosed in tangible or electronic form may be identified by Disclosing Party as confidential with conspicuous markings, or otherwise identified with a legend as being confidential, but in no event shall the absence of such a mark or legend preclude disclosed information which would be considered confidential by a Party exercising reasonable business judgment from being treated as Confidential Information by Receiving Party;

1.14 "Control" means in respect of a Person ownership or holding, directly or indirectly, of (i) fifty percent (50%) or more of the voting securities of other equity interest of the designated Person or (ii) securities to which are attached votes or other rights sufficient to elect a majority of the directors of the designated Person, other than by way of security only, by or for the benefit of the Person;

1.15 "Effective Date" means the date first set out at the start of this Agreement;

1.16 "Escrow Agreement" has the meaning set out in Section 5.10.2;

1.17 "Escrow Fund" has the meaning set out in Section 5.10.1;

1.18 "European Cancellation Actions" means the following cancellation actions brought by Fashion TV Programmgesellschaft mbH against the European Registrations, namely, (i) Cancellation Action 9328 brought against European Registration no. 599829 for the trademark Bigfoot FASHION TELEVISION Design, (ii) Cancellation Action 10157 brought against European Registration 776823 for the trademark FASHION TELEVISION THE CHANNEL Design, and (iii) Cancellation Action 10156 brought against European Registration no. 776864 for the trademark FASHION TELEVISION THE CHANNEL;

1.19 "European Registrations" means European Registration no. 599829 for the trademark Bigfoot FASHION TELEVISION Design, European Registration no. 776823 for the trademark FASHION TELEVISION THE CHANNEL Design, and European Registration no. 776864 for the trademark FASHION TELEVISION THE CHANNEL;

1.20 "Fashion Television Programming or Content" means (i) television programming or content in the fields of fashion, clothing, designers, models, popular culture, entertainment, art, architecture, photography and design and (ii) online programming or content in the fields of fashion, clothing, designers, models, popular culture, entertainment, art, architecture, photography and design (including, without limitation, text, photos, graphics, audio, video, audiovisual interactive and software content);

1.21 "FTA" has the meaning set out in Recital C;

1.22 "FTIL" has the meaning set out in Recital C;

1.23 "Full Purchase Price" has the meaning set out in Section 4.1;

1.24 "Indemnified Claim" has the meaning set out in Section 9.1.1;

1.25 "IP Claim" has the meaning set out in Section 8.2.1;

1.26 "Losses" means all losses, damages, liabilities, deficiencies, costs and expenses (including, without limitation, all legal and other professional fees and disbursements), interest, penalties and all amounts paid in settlement;

1.27 "New York Action" has the meaning set out in Section 9.2.3;

1.28 "Parties" means Bell and Bigfoot;

1.29 "Party" means Bell or Bigfoot;

22

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- 1.30 "Person" means any natural person, sole proprietorship, corporation, trust, joint venture, governmental authority, or any incorporated or unincorporated entity or association of any nature;
- 1.31 "Previous Assignment Agreements" means the trademark assignment agreements set out as Schedule "I" ;
- 1.32 "Previously Assigned Trademarks" means the Trademarks set out in Schedule "H" ("Previously Assigned Trademarks") including the registrations thereof;
- 1.33 "Purchase Price" has the meaning set out in Section 4.1;
- 1.34 "Purchased Trademarks" has the meaning set out in Section 4.1;
- 1.35 "Remaining Trademarks" means all Trademarks owned by Bell in every jurisdiction worldwide and all registrations thereof excluding (i) the Previously Assigned Trademarks and (ii) the Canadian Trademarks;
- 1.36 "Termination Remedy" has the meaning set out in Section 11.3 hereof;
- 1.37 "Trademarks" means the FASHION TELEVISION brand trademarks set out in Schedule "A" ("Trademarks") owned by Bell in each jurisdiction worldwide. For the purpose of clarity the rights in each individual Trademark comprising the Trademarks assigned by Bell to Bigfoot hereunder is limited, in respect of each such Trademark, to (i) the goods and/or services in association with which such Trademark is registered (in jurisdictions where such Trademark is registered) and (ii) the goods and/or services in association with which such Trademark has been used by Bell (or any Bell Party) (if any) (in jurisdictions where such Trademark is not registered).



**SCHEDULE "C" - License Agreement**

24

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Bigfoot Entertainment Inc.  
246 West Broadway  
New York NY 10013

212-666-9000 Phone  
212-656-1828 Fax

Michael Gleissner  
Managing Partner  
mgleiss@corp.bigfoot.com  
212-796-4304 direct

Bigfoot Entertainment Inc. | 246 West Broadway | New York NY 10013

Bell Media Inc.  
Attn. Kevin Assaff  
9 Channel Nine Court  
Scarborough, Ontario  
Canada M15 4B5

October 10, 2014

Letter of Intent - Licensing of the  
Brand Assets of the Channel "Fashion Television"

Dear Mr. Assaff,

This letter shall serve as a binding expression of interest of Bigfoot Entertainment Inc., a California corporation with limited liability ("Bigfoot") to enter into a license agreement with Bell Media Inc., a corporation established under the laws of Canada ("Bell"):

LICENSED PROPERTY. Bell's rights to the brand, logo, likeness, and trademarks as listed in Exhibit A (collectively the "Brand") of the channel "Fashion Television" for worldwide use with the exception of Canada, on an as-is basis.

TERM AND LICENSE FEE. 4 years starting Jan. 1, 2014.

Bigfoot to make following payments:

Period	License Fee
Jan. 1, 2014 - Dec. 31, 2015	\$1,500,000.00
Jan. 1, 2016 - Dec. 31, 2016	\$1,250,000.00
Jan. 1, 2017 - Dec. 31, 2017	\$1,250,000.00

...

www.bigfoot.com



Page - 2 - of our Letter of Intent to Bell Media Inc.

**ADJUSTMENTS.** The license fee for the years 2016 and 2017 (on a going forward basis from the date of the final resolution if such date occurs after December 31, 2015) will be discounted by up to 50% in case the pending cancellation proceedings of the European Union Trademarks which are ongoing as of the date hereof are resolved against Bell with finality.

**PAYMENT SCHEDULE.** Provided that no adjustments are to be made, Bigfoot shall make payments according to the following schedule:

Due Date	Payment
Execution of this Letter	\$1,000,000.00
Oct 1, 2015	\$500,000.00
Jan. 2, 2016	\$312,500.00
April 1, 2016	\$312,500.00
July 1, 2016	\$312,500.00
Oct. 1, 2016	\$312,500.00
Jan. 2, 2017	\$312,500.00
April 1, 2017	\$312,500.00
July 1, 2017	\$312,500.00
Oct. 1, 2017	\$312,500.00

Bell will invoice payments when due, and Bigfoot will make payments via wire transfer to the bank account designated by Bell.

**RIGHTS AND OBLIGATIONS OF BIGFOOT.** Bigfoot will establish an entity using the brand "Fashion Television", and this entity will be entitled to defend current brand assets such as trademarks etc. All legal action shall be at the sole discretion and expense of Bigfoot. Bell retains the right and discretion to defend any brand asset(s) which Bigfoot elects not to defend. Subject to Bell's written approval in each instance, Bigfoot is authorized to sublicense the marks provided that the sublicensing period does not exceed the license period under this agreement and that the sublicensing is not in respect of Canada.

**RIGHTS AND OBLIGATIONS OF BELL.** Bell will provide Power of Attorney to IP counsel designated by Bigfoot to maintain the marks and extend the marks upon expiration, as well as to defend any hostile action against the marks, and allow Bigfoot to file, on behalf of Bell, new marks to protect the validity of their trademark portfolio. Bell will also provide evidence that is in Bell's possession for the purpose of rectifying any outdated mark owner information or otherwise needed within the cancellation proceedings to prove use (especially web and YouTube statistics, to the extent available).

**WEBSITE.** Bigfoot will in coordination with Bell manage the website [www.fashiontelevision.com](http://www.fashiontelevision.com) and will maintain the site and social media



Page - 3 - of our Letter of Intent to Bell Media Inc.

accounts related to "Fashion Television". Without limitation, such coordination shall be such that persons accessing the website from within Canada receive program listings and other content that is relevant in the context of the Canadian channel.

**PURCHASE OPTION.** At the conclusion of the license period, Bigfoot shall have an option to purchase the Brand for \$1,000,000.00.

The option needs to be exercised and, if exercised, paid, by Dec. 31, 2017, and Bigfoot shall grant a perpetual royalty-free license to the Brand for the territory of Canada to Bell.

**THIRD PARTY CLAIMS.** Bigfoot shall defend, indemnify and hold harmless Bell from and against any and all third party claims arising from the exercise of the rights granted hereunder.

**CLOSING.** Upon execution of this letter, per the payment schedule above, Bigfoot shall be depositing the amount of \$1,000,000.00 via wire transfer, representing the first downpayment on the license fee for the first period, into a bank account designated by Bell.

**FURTHER ASSURANCES.** The parties shall do, execute and deliver, or cause to be done, executed and delivered, such further acts and documents as may be reasonably required to give effect to this letter or to carry out the intention or facilitate the performance hereof.

**MISCELLANEOUS.** All amounts stated in this letter are in United States Dollars. This agreement shall be governed by the laws of Canada, and all disputes that cannot be amicably resolved shall be subject to arbitration governed by the rules of the Canadian Arbitration Association.

If the terms and conditions above are acceptable to you, please return a signed copy of this letter to the attention of the undersigned before October 15, 2014, upon which this offer is deemed to have expired.

Best regards,

Bigfoot Entertainment Inc.

Michael Gleissner  
General Counsel

Accepted and Agreed:

Bell Media Inc.

(name) KEVIN ASSAFF

Date  
2014. 10. 15



## Exhibit A:

## List of Trademarks

Country/Territory	Reg. No.	Class	App. Date	Holder
Australia	763598	38,41	1999	CTV LIMITED
China	1327466	38	1999	CTV LIMITED
China	1327493	41	1999	CTV LIMITED
Colombia	99018933	41	1999	CTV LIMITED
Colombia	99018934	38	1999	CTV LIMITED
European Union (CTM)	599829	25,38,41	11-Aug-1997	Bell Media Inc.
European Union (CTM)	776823	25,38,41	23-Mar-1998	Bell Media Inc.
European Union (CTM)	776864	25,38,41	23-Mar-1998	Bell Media Inc.
Egypt	120807	38	2006	CHUM
Egypt	120808	41	2004	CHUM
Hong Kong	9807234	42	1999	CTV LIMITED
Iceland	99000318	38,41	1999	CTV LIMITED
India	805679	25	2007	CHUM
Indonesia	16398	38	1998	CTV LIMITED
Indonesia	16399	41	1998	CTV LIMITED
Israel	124783	38	1999	CHUM
Israel	124784	41	1999	CHUM
Japan	10044658	41	2000	CTV LIMITED
Malaysia	98010424	38	2002	CHUM
Malaysia	98010425	41	2002	CHUM
Morocco	68451	38,41	15-Jan-1999	CTV Limited
New Zealand	B303565	38	2000	CTV LIMITED
New Zealand	B303566	41	2000	CTV LIMITED
Saudi Arabia	99188076	38	2000	CTV LIMITED
Saudi Arabia	99188103	41	2000	CTV LIMITED
Singapore	T98009289B	38	15-Jan-1999	CTV LIMITED
Singapore	T98009290F	41	15-Jan-1999	CTV LIMITED
Slovenia	9871831	38,41	28-Dec-1998	CHUM
South Africa	98012732	38	2001	CHUM
South Africa	98012733	41	2001	CHUM
Tangier / Algeria	015008	38,41	2001	CHUM
United States	2945407	38,41	17-Apr-1996	Bell Media Inc.

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**SCHEDULE "D" – Short Form Agreement**

25

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**Trademark Assignment Agreement**

WHEREAS, Bell Media Inc. (hereinafter "the Assignor"), whose full post office address is 9 Channel Nine Court, Scarborough, Ontario M1S 4B5, was the owner of the trademarks set out in Exhibit 1 hereto (the "Trademarks");

AND WHEREAS, effective 24 December 2014, for good and valuable consideration, the receipt of which is acknowledged by Assignor, Assignor sold, transferred and assigned to Bigfoot Entertainment Inc. (hereinafter "the Assignee"), whose full post office address is 246 West Broadway, New York, NY, 10013, the Trademarks and all of Assignor's right, title and interest therein;

NOW THEREFORE, Assignor and Assignee confirm that in consideration of good and valuable consideration paid by Assignee to Assignor, effective 24 December 2014, the Assignor sold, assigned, and transferred to the Assignee, the Trademarks and all of its right, title and interest therein including the registrations thereof, all of its statutory and common law rights therein, all of its goodwill associated therewith, and all of its rights of action appurtenant or relating to the Trademarks, including without limitation, all rights as a party in any legal or administrative proceedings and all of its right to sue for, collect and retain damages, interest, profits and costs for past infringement thereof, all of the same to be held by the Assignee as fully and effectively as they would have been held by the Assignor had this assignment not taken place.

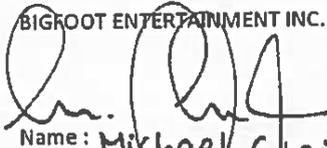
SIGNED at \_\_\_\_\_, Toronto, Ontario

BELL MEDIA INC.

Name :  
Title :

SIGNED at Hong Kong \_\_\_\_\_

BIGFOOT ENTERTAINMENT INC.

  
Name: Michael Gleissner  
Title: President



27

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Exhibit 1

Country / Jurisdiction	Mark	Class	Registration Number
Australia		38,41	763598
China		38	1327466
China		41	1327493
Columbia	FASHION TELEVISION	41	Application 99018933 Registration 221906
Columbia	FASHION TELEVISION	38	Application 9918934 Registration 221905
European Union		25,38,41	599829
European Union	<b>FASHION TELEVISION THE CHANNEL</b>	25,38,41	776823
European Union	FASHION TELEVISION THE CHANNEL	25,38,41	776864
Egypt		38	Application 120807
Egypt		41	Application 120808

28

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Country / Jurisdiction	Mark	Class	Registration Number
Hong Kong		41	2000B01713
Hong Kong		38	2000B01712
Hong Kong		42	2000B01714
Hong Kong		38, 41, 45	2000B01712AA
Hong Kong		42	9807234
Iceland		38,41	99000318
India		25	Application 805679
India	FASHION TELEVISION LOGO OF T AND F	16	805678
Indonesia		38	16398 Application J9816398

29

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Country / Jurisdiction	Mark	Class	Registration Number
Indonesia		41	Application 16399
Japan		41	10044658 Application Number H10-044658 Registration Number 4354499
Malaysia		38	98010424 Application
Malaysia		41	98010425 Application
Morocco	FASHION TELEVISION	38,41	Application 68451
New Zealand		38	8303565
New Zealand		41	8303566
Saudi Arabia		38	99188076

30

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Country / Jurisdiction	Mark	Class	Registration Number
Saudi Arabia		41	99188103
Slovenia		38,41	9871831
South Africa		38	98012732
South Africa		41	9802733
Tangiers / Algeria		38,41	015008
United States of America		38,41	2945407

31

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SCHEDULE "E" – Comfort Letters

[Bigfoot letterhead]  
Bigfoot Entertainment Inc.,  
246 West Broadway,  
New York, NY, 10013

[DATE]

Mr. Kevin Assaff  
Bell Media, Inc.  
9 Channel Nine Court,  
Scarborough, Ontario  
Canada M1S 4B5

Dear Mr. Assaff,

This letter shall serve as a written acknowledgement by Bigfoot Entertainment Inc., together with its parents, subsidiaries, affiliates, licensees, and/or assigns (collectively, "Bigfoot"), of the facts set forth below.

On or about October 10, 2014, Bell Media, Inc. ("Bell") and Bigfoot executed a binding Letter of Intent (the "License Agreement"), pursuant to which Bell granted Bigfoot the exclusive right to use "the brand, logo, likeness, and trademarks" associated with Bell's "Fashion Television" Brand for worldwide use with the exception of Canada, on an as-is basis" (the "Licensed Trademarks"). Pursuant to the License Agreement, Bigfoot was entitled to take action to defend any of the Licensed Trademarks in its sole discretion and at its sole expense. Pursuant to the License Agreement, on or about \_\_\_\_\_, Bigfoot transferred and assigned all of its right, title and interest in the Licensed Trademarks to its subsidiaries Fashion Television International, Ltd. ("FTI"), a \_\_\_\_\_ corporation found at 20-22 Wenlock Road, London N1 7GU, United Kingdom and Fashion Television International S.A., 35a avenue JF Kennedy, Luxembourg.

Subsequently, Bell and Bigfoot executed a series of agreements (the "Assignments") assigning all right, title and interest in various trademarks, including the Licensed Trademarks, to Bigfoot, again with the exception of Canada (the "Purchased Trademarks").

Bigfoot hereby acknowledges and affirms that neither Bell nor any of its parents, subsidiaries, affiliates, licensees, or assigns has specifically authorized, encouraged, or provided any instructions to Bigfoot at any time regarding the enforcement of any rights in any Licensed Trademark and/or Purchased Trademark. Bigfoot further acknowledges and affirms that Bell was not consulted with respect to, or given advance notice of, any enforcement actions contemplated by Bigfoot.

Bigfoot acknowledges and affirms that both Bigfoot and FTI are bound by all of the terms of, and obligations imposed by, of the License Agreement and Assignments, including the Indemnification provisions.

Bigfoot Entertainment Inc.

32

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By: \_\_\_\_\_

Title: \_\_\_\_\_

[FTI Letterhead]

[DATE]

Mr. Kevin Assaff  
Bell Media, Inc.  
9 Channel Nine Court,  
Scarborough, Ontario  
Canada M1S 4B5

Dear Mr. Assaff,

This letter shall serve as a written acknowledgement by Fashion Television International, Ltd, a \_\_\_\_\_ corporation found at 20-22 Wenlock Road, London N1 7GU, United Kingdom, together with its parents, subsidiaries, affiliates, licensees, and/or assigns (collectively, "FTI"), of the facts set forth below.

On or about October 10, 2014, Bell Media, Inc. ("Bell") and Bigfoot Entertainment, Inc. ("Bigfoot") executed a binding Letter of Intent (the "License Agreement"), pursuant to which Bell granted Bigfoot the exclusive right to use "the brand, logo, likeness, and trademarks" associated with Bell's "Fashion Television" Brand for worldwide use with the exception of Canada, on an as-is basis" (the "Licensed Trademarks"). Following the execution of the License Agreement and pursuant to its terms, on or about \_\_\_\_\_, Bigfoot transferred all of its right, title and interest in the Licensed Trademarks to FTI. FTI, on its part, agreed to be bound by all of the terms of, and obligations imposed by, of the License Agreement and Assignments, including the indemnification provisions.

Thereafter, Bell and Bigfoot executed a series of agreements (the "Assignments") assigning all right, title and interest in various trademarks, including the Licensed Trademarks, to Bigfoot, again with the exception of Canada (the "Purchased Trademarks").

FTI hereby acknowledges and affirms that neither Bell nor any of its parents, subsidiaries, affiliates, licensees, or assigns has specifically authorized, encouraged, or provided any instructions to FTI at any time regarding the enforcement of any Licensed Trademark and/or Purchased Trademark, including but not limited to: (i) the enforcement actions described in the Complaint filed in *F.TV. Ltd. v. Bell Media, Inc.*, Civil Action No. 14-cv-9856 (S.D.N.Y.) (filed Dec. 18, 2014), and specifically including the sending of cease-and-desist letters as described therein; and (ii) any enforcement actions initiated by Bigfoot against third parties in jurisdictions outside of the United States. FTI further acknowledges and affirms that Bell was not consulted with respect to, or given advance notice of, any of the enforcement actions described in this paragraph.

FTI further acknowledges and affirms that any and all enforcement actions that have been taken by or for FTI, or will in the future be taken by or for FTI, in respect of any of the Licensed Trademarks or Purchased Trademarks, were and are undertaken in FTI's sole discretion and expense, and are the sole responsibility of FTI.

33

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Fashion Television International Ltd.

By: \_\_\_\_\_

Title: \_\_\_\_\_

34

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OTT LAW 4890928/29

## SCHEDULE "F" – Registrations

Country / Jurisdiction	Mark	Class	Registration Number
Australia		38,41	763598
China		38	1327466
China		41	1327493
Columbia	FASHION TELEVISION	41	Application 99018933 Registration 221906
Columbia	FASHION TELEVISION	38	Application 9918934 Registration 221905
European Union		25,38,41	599829
European Union	<b>FASHION TELEVISION THE CHANNEL</b>	25,38,41	776823
European Union	FASHION TELEVISION THE CHANNEL	25,38,41	776864
Egypt		38	Application 120807
Egypt		41	Application 120808

35

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Country / Jurisdiction	Mark	Class	Registration Number
Hong Kong		41	2000801713
Hong Kong		38	2000801712
Hong Kong		42	2000801714
Hong Kong		38, 41, 45	2000801712AA
Hong Kong		42	9807234
Iceland		38,41	99000318
India		25	Application 805679
India	FASHION TELEVISION LOGO OF T AND F	16	805678
Indonesia		38	16398 Application J9816398

36

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Country / Jurisdiction	Mark	Class	Registration Number
Indonesia		41	Application 16399
Japan		41	10044658 Application Number H10-044658 Registration Number 4354499
Malaysia		38	98010424 Application
Malaysia		41	98010425 Application
Morocco	FASHION TELEVISION	38,41	Application 68451
New Zealand		38	8303565
New Zealand		41	8303566
Saudi Arabia		38	99188076

37

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Country / Jurisdiction	Mark	Class	Registration Number
Saudi Arabia		41	99188103
Slovenia		38,41	9871831
South Africa		38	98012732
South Africa		41	9802733
Tangiers / Algeria		38,41	015008
United States of America		38,41	2945407

38

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Schedule "G" – Canadian Trademarks

39

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Property Office  
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Industry Canada

Office de la propriété  
intellectuelle du Canada  
Un organisme  
d'Industrie Canada



## Canadian Intellectual Property Office

### Canadian trade-mark data

#### Third-Party Information Liability Disclaimer

[Back to search](#)

The database was last updated on: 2014-12-30

**APPLICATION NUMBER:**

1105740

**REGISTRATION NUMBER:**

TMA625921

**STATUS:**

REGISTERED

**FILED:**

2001-06-08

**FORMALIZED:**

2001-07-05

**ADVERTISED:**

2004-01-21

**REGISTERED:**

2004-11-18

**REGISTRANT:**

CTV Limited  
9 Channel Nine Court  
Scarborough  
M1S 4B5  
ONTARIO

**REPRESENTATIVE FOR SERVICE:**

BEAUDIN & ASSOCIES  
1 Carrefour Alexandre-Graham-Bell  
Édifce A7  
Verdun  
QUÉBEC H3E 3B3

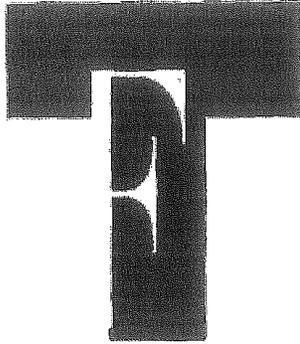
**CURRENT OWNER:**

Bell Media Inc.  
299 Queen Street West  
Toronto  
M5V 2Z9  
ONTARIO

**REPRESENTATIVE FOR SERVICE:**

BEAUDIN & ASSOCIES  
1 Carrefour Alexandre-Graham-Bell  
Édifce A7  
Verdun  
QUÉBEC H3E 3B3

**TRADE-MARK (Design):**



FASHIONTELEVISIONCHANNEL

**MARK DESCRIPTIVE REFERENCE:**  
FT FASHION TELEVISION CHANNEL Design

**DISCLAIMER TEXT:**  
The right to the exclusive use of the word CHANNEL in respect of television broadcasting services, cable television programming services and television programming services is disclaimed apart from the trade-mark.

**INDEX HEADINGS:**  
FT TF FASHIONTELEVISIONCHANNEL

FASHION TELEVISION CHANNEL

**VIENNA INFORMATION:**  
**VIENNA INFORMATION**  
**Code Description**

- 27.5.1 Letters presenting a special form of writing
- 27.5.22 Monograms formed of intertwined, overlapping or otherwise combined letters

**WARES:**  
(1) Mugs, wearing apparel namely t- shirts.  
(2) Printed publications namely brochures.

**SERVICES:**  
(1) Television broadcasting services, cable television programming services; television programming services; distributing of television programming to cable television systems.  
(2) Development and production of television programs and systems; distribution of television programs.  
(3) Interactive electronic communications services namely the operation of an Internet website for the purpose of providing on-line chats, e-mail, direct sales and television webcasts.  
(4) Providing information on a wide variety of topics of general interest to the consuming public via the media of television, satellite, computer, telephone, audio, video, and/or via the World Wide Web on the global Internet (including narrow band and broad band applications) or through electronic mail.  
(5) Entertainment services in the nature of an ongoing series of shows featuring commentary, news, arts, fashion, lifestyle, music and/or performances through the mediums of television, satellite, computer, telephone, electronic mail, radio, audio, and video media and/or the Internet.

**CLAIMS:**

Declaration of Use filed October 08, 2004.

**ASSOCIATED MARKS:**TMA341,087 TMA341,088 TMA487,980 TMA584,282 TMA616,692  
TMA617,318 TMA621,572 TMA625,055**Action Information**

<b><u>ACTION</u></b>	<b><u>DATE</u></b>	<b><u>BF</u></b>	<b><u>COMMENTS</u></b>
Filed	2001-06-08		
Created	2001-06-14		
Formalized	2001-07-05		
Search Recorded	2002-07-18		
Examiner's First Report	2002-07-18	2002-11-18	
Extension of Time	2002-10-23	2003-05-18	Request Letter Date: 2002/10/17
Rep for Service Changed	2003-03-03		From: 2841 To: 6237 / Voir Preuve au dossier/See evidence on File No. 169992
Agent Changed	2003-03-03		From: 2841 To: 6237 / Voir Preuve au dossier/See evidence on File No. 169992
Extension of Time	2003-05-01	2003-11-18	Request Letter Date: 2003/04/15
Correspondence Created	2003-08-26	2003-12-26	
Approved	2003-12-18		
Extracted for Advertisement	2004-01-08		Vol.50 Issue 2569 2004/01/21
Advertised	2004-01-21		Vol.50 Issue 2569
Allowed	2004-04-08		
Allowance Notice Sent	2004-04-08	2004-10-08	
Registered	2004-11-18		
Rep for Service Changed	2008-02-11		From: 6237 To: 12578 / Voir Preuve au dossier/See evidence on File No. 253285
Amendment to Registration	2008-02-11		Name and Address / Voir Preuve au dossier/See evidence on File No. 253285
Rep for Service Changed	2011-09-09		From: 12578 To: 14267 / Voir Preuve au dossier/See evidence on File No. 253285
Amendment to Registration	2011-10-01		Amalgamation / Voir Preuve au dossier/See evidence on File No. 253285
Amendment to Registration	2011-10-01		Name / Voir Preuve au dossier/See evidence on File No. 253285
Amendment to Registration	2013-04-23		Owner Address Change / Voir Preuve au dossier/See evidence on File No. 253285

**FOOTNOTES:****CHANGE IN TITLE/CHANGEMENT EN TITRE:**

TYPE OF CHANGE/GENRE DE CHANGEMENT: Name and Address/Nom et adresse

DATE REGISTERED/DATE DE L'ENREGISTREMENT: 11 fév/Feb 2008  
DATE OF CHANGE/DATE DE CHANGEMENT: 31 juil/Jul 2007  
COMMENTS/COMMENTAIRES: FROM: CHUM LIMITED,  
TO: CTV Limited  
Voir Preuve au dossier/See evidence on File No. 253285

**CHANGE IN TITLE/CHANGEMENT EN TITRE:**

TYPE OF CHANGE/GENRE DE CHANGEMENT: Amalgamation/Fusionnement  
DATE REGISTERED/DATE DE L'ENREGISTREMENT: 01 oct/Oct 2011  
DATE OF CHANGE/DATE DE CHANGEMENT: 15 mars/Mar 2011  
COMMENTS/COMMENTAIRES: FROM: CTV Limited  
TO: CTV Inc.  
Voir Preuve au dossier/See evidence on File No. 253285

**CHANGE IN TITLE/CHANGEMENT EN TITRE:**

TYPE OF CHANGE/GENRE DE CHANGEMENT: Name/Nom  
DATE REGISTERED/DATE DE L'ENREGISTREMENT: 01 oct/Oct 2011  
DATE OF CHANGE/DATE DE CHANGEMENT: 01 avr/Apr 2011  
COMMENTS/COMMENTAIRES: FROM: CTV Inc.  
TO: Bell Media Inc.  
Voir Preuve au dossier/See evidence on File No. 253285

**OWNER ADDRESS CHANGE/CHANGEMENT D'ADRESSE DU PROPRIÉTAIRE:**

DATE REGISTERED/DATE DE L'ENREGISTREMENT: 23 avr/Apr 2013  
COMMENTS/COMMENTAIRES: Voir Preuve au dossier/See evidence on  
File No. 253285

[Back to search](#)

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Last updated: 2014-12-30



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Property Office  
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Office de la propriété  
intellectuelle du Canada  
Un organisme  
d'Industrie Canada

Canada

## Canadian Intellectual Property Office

### Canadian trade-mark data

#### Third-Party Information Liability Disclaimer

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The database was last updated on: 2014-12-30

**APPLICATION NUMBER:**

0857737

**REGISTRATION NUMBER:**

TMA617318

**STATUS:**

REGISTERED

**FILED:**

1997-10-02

**FORMALIZED:**

1997-10-10

**ADVERTISED:**

2003-10-15

**REGISTERED:**

2004-08-23

**REGISTRANT:**

CTV Limited  
9 Channel Nine Court  
Scarborough  
M1S 4B5  
ONTARIO

**REPRESENTATIVE FOR SERVICE:**

BEAUDIN & ASSOCIES  
1 Carrefour Alexandre-Graham-Bell  
Édifce A7  
Verdun  
QUÉBEC H3E 3B3

**CURRENT OWNER:**

Bell Media Inc.  
299 Queen Street West  
Toronto  
M5V 2Z9  
ONTARIO

**REPRESENTATIVE FOR SERVICE:**

BEAUDIN & ASSOCIES  
1 Carrefour Alexandre-Graham-Bell  
Édifce A7  
Verdun  
QUÉBEC H3E 3B3

**INTERESTED PARTIES:**

**OPPONENT (CASE CLOSED)**

Chanel S. de.R.L.  
{unknown address}

REPRESENTATIVE FOR SERVICE:  
NORTON ROSE FULBRIGHT CANADA  
LLP/S.E.N.C.R.L.,S.R.L.  
1, Place Ville Marie  
Suite 2500, Montreal  
QUEBEC H3B 1R1

TRADE-MARK (Design):

**FASHION  
TELEVISION  
THE CHANNEL**

MARK DESCRIPTIVE REFERENCE:  
**FASHION TELEVISION THE CHANNEL DESIGN**

DISCLAIMER TEXT:

The right to the exclusive use of the word FASHION TELEVISION is disclaimed apart from the trade-mark with respect to the services "production, distribution, recording and development of audio and video tapes, cassettes, Cd's, CD-ROMS, computer discs and video discs." The right to the exclusive use of the word CHANNEL is disclaimed apart from the trade-mark with respect to the services.

INDEX HEADINGS:  
FASHION TELEVISION THE CHANNEL

SERVICES:

(1) Television broadcasting services; telecommunication services, namely, television programming and distribution services and interactive electronic communication services, namely the operation of an Internet website for the purpose of providing entertainment services in the nature of news, fashion, pop culture, art, art exhibits, architecture, photography, models, celebrities, fashion trends, designers, designs, fashion shows and other fashion, entertainment and pop culture related topics; providing information and entertainment services via the media of television, namely, television production services; production, distribution, recording and development of television programs, audio and video tapes.

CLAIMS:  
Declaration of Use filed July 05, 2004.

ASSOCIATED MARKS:  
TMA341,087 TMA487,980 TMA584,282 TMA616,692 TMA621,572  
TMA625,055 TMA625,921

**Action Information**

<b>ACTION</b>	<b>DATE</b>	<b>BF</b>	<b>COMMENTS</b>
Filed	1997-10-02		
Created	1997-10-08		
Formalized	1997-10-10		
Search Recorded	1998-02-26		
Examiner's First Report	1998-03-11	1998-07-11	

Extension of Time	1998-08-12	1999-01-11	Request Letter Date: 1998/07/10
Extension of Time	1999-01-28	1999-07-11	Request Letter Date: 1999/01/11
Extension of Time	1999-07-26	2000-01-11	Request Letter Date: 1999/06/22
Extension of Time	2000-02-01	2000-07-11	Request Letter Date: 2000/01/11
Agent Name Change	2000-02-17		
Rep for Service Name Change	2000-02-17		
Extension of Time	2000-07-27	2001-01-11	Request Letter Date: 2000/06/23
Extension of Time	2001-01-02	2001-07-11	Request Letter Date: 2000/12/11
Extension of Time	2001-07-19	2002-01-11	Request Letter Date: 2001/07/11
Extension of Time	2001-12-13	2002-07-11	Request Letter Date: 2001/11/29
Extension of Time	2002-06-12	2003-01-11	Request Letter Date: 2002/05/23
Correspondence Created	2003-01-20	2003-05-20	
Rep for Service Changed	2003-03-03		From: 2841 To: 6237 / Voir Preuve au dossier/See evidence on File No. 169992
Agent Changed	2003-03-03		From: 2841 To: 6237 / Voir Preuve au dossier/See evidence on File No. 169992
Extension of Time Approved	2003-05-01	2003-11-20	Request Letter Date: 2003/04/15
Extracted for Advertisement	2003-09-16		
Advertised	2003-10-01		Vol.50 Issue 2555 2003/10/15
Opposed	2003-10-15		Vol.50 Issue 2555
Opposition Removed	2003-12-18		Opposition Filed.
Allowed	2004-04-22		Opposition/Section 45 Case Number : 1, Opposition/Section 45 Case Closed - Deadline to File SO Expired.
Allowance Notice Sent	2004-04-23	2004-10-23	
Registered	2004-08-23		
Clerical Correction	2005-03-17		The register has been corrected as per your letter dated March 1, 2005.
Rep for Service Changed	2008-02-11		From: 6237 To: 12578 / Voir Preuve au dossier/See evidence on File No. 253285
Amendment to Registration	2008-02-11		Name and Address / Voir Preuve au dossier/See evidence on File No. 253285
Rep for Service Changed	2011-09-09		From: 12578 To: 14267 / Voir Preuve au dossier/See evidence on File No. 253285
Amendment to Registration	2011-10-01		Amalgamation / Voir Preuve au dossier/See evidence on File No. 253285
Amendment to Registration	2011-10-01		Name / Voir Preuve au dossier/See evidence on File No. 253285
Amendment to Registration	2013-04-23		Owner Address Change / Voir Preuve au dossier/See evidence on File No. 253285

**FOOTNOTES:**

**AMENDMENT TO REGISTRATION/MODIFICATION A L'ENREGISTREMENT:**

TYPE OF AMENDMENT/GENRE DE MODIFICATION: Clerical correction  
(Amendment to registration)/Correction (Modification à l'enregistrement)

DATE OF CHANGE/DATE DE CHANGEMENT: 17 mars/Mar 2005

COMMENTS/COMMENTAIRES: The register has been corrected as per your letter dated March 1, 2005.

**CHANGE IN TITLE/CHANGEMENT EN TITRE:**

TYPE OF CHANGE/GENRE DE CHANGEMENT: Name and Address/Nom et adresse

DATE REGISTERED/DATE DE L'ENREGISTREMENT: 11 fév/Feb 2008

DATE OF CHANGE/DATE DE CHANGEMENT: 31 juil/Jul 2007

COMMENTS/COMMENTAIRES: FROM: CHUM LIMITED

TO: CTV Limited

Voir Preuve au dossier/See evidence on File No. 253285

**CHANGE IN TITLE/CHANGEMENT EN TITRE:**

TYPE OF CHANGE/GENRE DE CHANGEMENT: Amalgamation/Fusionnement

DATE REGISTERED/DATE DE L'ENREGISTREMENT: 01 oct/Oct 2011

DATE OF CHANGE/DATE DE CHANGEMENT: 15 mars/Mar 2011

COMMENTS/COMMENTAIRES: FROM: CTV Limited

TO: CTV Inc.

Voir Preuve au dossier/See evidence on File No. 253285

**CHANGE IN TITLE/CHANGEMENT EN TITRE:**

TYPE OF CHANGE/GENRE DE CHANGEMENT: Name/Nom

DATE REGISTERED/DATE DE L'ENREGISTREMENT: 01 oct/Oct 2011

DATE OF CHANGE/DATE DE CHANGEMENT: 01 avr/Apr 2011

COMMENTS/COMMENTAIRES: FROM: CTV Inc.

TO: Bell Media Inc.

Voir Preuve au dossier/See evidence on File No. 253285

**OWNER ADDRESS CHANGE/CHANGEMENT D'ADRESSE DU PROPRIÉTAIRE:**

DATE REGISTERED/DATE DE L'ENREGISTREMENT: 23 avr/Apr 2013

COMMENTS/COMMENTAIRES: Voir Preuve au dossier/See evidence on File No. 253285

[Back to search](#)

[Back](#)

---

Last updated: 2014-12-30



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d'Industrie Canada



## Canadian Intellectual Property Office

### Canadian trade-mark data

#### Third-Party Information Liability Disclaimer

[Back to search](#)

The database was last updated on: 2014-12-30

**APPLICATION NUMBER:**

1105741

**REGISTRATION NUMBER:**

TMA625055

**STATUS:**

REGISTERED

**FILED:**

2001-06-08

**FORMALIZED:**

2001-07-05

**ADVERTISED:**

2004-01-21

**REGISTERED:**

2004-11-09

**REGISTRANT:**

CTV Limited  
9 Channel Nine Court  
Scarborough  
M1S 4B5  
ONTARIO

**REPRESENTATIVE FOR SERVICE:**

BEAUDIN & ASSOCIES  
1 Carrefour Alexandre-Graham-Bell  
Édifice A7  
Verdun  
QUÉBEC H3E 3B3

**CURRENT OWNER:**

Bell Media Inc.  
299 Queen Street West  
Toronto  
M5V 2Z9  
ONTARIO

**REPRESENTATIVE FOR SERVICE:**

BEAUDIN & ASSOCIES  
1 Carrefour Alexandre-Graham-Bell  
Édifice A7  
Verdun  
QUÉBEC H3E 3B3

**TRADE-MARK (Design):**



**MARK DESCRIPTIVE REFERENCE:**  
FTDesign FASHION TELEVISION CHANNEL

**DISCLAIMER TEXT:**  
The right to the exclusive use of the word CHANNEL in respect of television broadcasting services, cable television programming services and television programming services is disclaimed apart from the trade-mark.

**INDEX HEADINGS:**  
FT FASHION TELEVISION CHANNEL TF

**WARES:**  
(1) Pens, wearing apparel namely t- shirts, novelty buttons.  
(2) Printed publications namely brochures.

**SERVICES:**  
(1) Television broadcasting services, cable television programming services; television programming services; distributing of television programming to cable television systems.  
(2) Development and production of television programs and systems; distribution of television programs.  
(3) Interactive electronic communications services namely the operation of an Internet website for the purpose of providing on-line chats, e-mail, direct sales and television webcasts.  
(4) Providing information on a wide variety of topics of general interest to the consuming public via the media of television, satellite, computer, telephone, audio, video, and/or via the World Wide Web on the global Internet (including narrow band and broad band applications) or through electronic mail.  
(5) Entertainment services in the nature of an ongoing series of shows featuring commentary, news, arts, fashion, lifestyle, music and/or performances through the mediums of television, satellite, computer, telephone, electronic mail, radio, audio, and video media and/or the Internet.

**CLAIMS:**  
Declaration of Use filed October 08, 2004.

**ASSOCIATED MARKS:**  
TMA341,087 TMA341,088 TMA487,980 TMA584,282 TMA616,692  
TMA617,318 TMA621,572 TMA625,921

**Action Information**

<b>ACTION</b>	<b>DATE</b>	<b>BF</b>	<b>COMMENTS</b>
Filed	2001-06-08		
Created	2001-06-14		
Formalized	2001-07-05		
Search Recorded	2002-07-18		
Examiner's First Report	2002-07-18	2002-11-18	
Extension of Time	2002-10-23	2003-05-18	Request Letter Date: 2002/10/17
Rep for Service Changed	2003-03-03		From: 2841 To: 6237 / Voir Preuve au dossier/See evidence on File No. 169992
Agent Changed	2003-03-03		From: 2841 To: 6237 / Voir Preuve au dossier/See evidence on File No. 169992
Extension of Time	2003-05-01	2003-11-18	Request Letter Date: 2003/04/15
Correspondence Created	2003-08-26	2003-12-26	
Approved	2003-12-18		
Extracted for Advertisement	2004-01-08		Vol.50 Issue 2569 2004/01/21
Advertised	2004-01-21		Vol.50 Issue 2569
Allowed	2004-04-08		
Allowance Notice Sent	2004-04-08	2004-10-08	
Registered	2004-11-09		
Rep for Service Changed	2008-02-11		From: 6237 To: 12578 / Voir Preuve au dossier/See evidence on File No. 253285
Amendment to Registration	2008-02-11		Name and Address / Voir Preuve au dossier/See evidence on File No. 253285
Rep for Service Changed	2011-09-09		From: 12578 To: 14267 / Voir Preuve au dossier/See evidence on File No. 253285
Amendment to Registration	2011-10-01		Amalgamation / Voir Preuve au dossier/See evidence on File No. 253285
Amendment to Registration	2011-10-01		Name / Voir Preuve au dossier/See evidence on File No. 253285
Amendment to Registration	2013-04-23		Owner Address Change / Voir Preuve au dossier/See evidence on File No. 253285

**FOOTNOTES:****CHANGE IN TITLE/CHANGEMENT EN TITRE:**

TYPE OF CHANGE/GENRE DE CHANGEMENT: Name and Address/Nom et adresse

DATE REGISTERED/DATE DE L'ENREGISTREMENT: 11 fév/Feb 2008

DATE OF CHANGE/DATE DE CHANGEMENT: 31 juil/Jul 2007

COMMENTS/COMMENTAIRES: FROM: CHUM LIMITED,

TO: CTV Limited

Voir Preuve au dossier/See evidence on File No. 253285

**CHANGE IN TITLE/CHANGEMENT EN TITRE:**

TYPE OF CHANGE/GENRE DE CHANGEMENT: Amalgamation/Fusionnement  
DATE REGISTERED/DATE DE L'ENREGISTREMENT: 01 oct/Oct 2011  
DATE OF CHANGE/DATE DE CHANGEMENT: 15 mars/Mar 2011  
COMMENTS/COMMENTAIRES: FROM: CTV Limited  
TO: CTV Inc.

Voir Preuve au dossier/See evidence on File No. 253285

**CHANGE IN TITLE/CHANGEMENT EN TITRE:**

TYPE OF CHANGE/GENRE DE CHANGEMENT: Name/Nom  
DATE REGISTERED/DATE DE L'ENREGISTREMENT: 01 oct/Oct 2011  
DATE OF CHANGE/DATE DE CHANGEMENT: 01 avr/Apr 2011  
COMMENTS/COMMENTAIRES: FROM: CTV Inc.  
TO: Bell Media Inc.

Voir Preuve au dossier/See evidence on File No. 253285

**OWNER ADDRESS CHANGE/CHANGEMENT D'ADRESSE DU PROPRIÉTAIRE:**

DATE REGISTERED/DATE DE L'ENREGISTREMENT: 23 avr/Apr 2013  
COMMENTS/COMMENTAIRES: Voir Preuve au dossier/See evidence on  
File No. 253285

[Back to search](#)

[Back](#)

---

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## Canadian Intellectual Property Office

### Canadian trade-mark data

#### Third-Party Information Liability Disclaimer

[Back to search](#)

The database was last updated on: 2014-12-30

**APPLICATION NUMBER:**  
0857738

**REGISTRATION NUMBER:**  
TMA621572

**STATUS:**

REGISTERED

**FILED:**

1997-10-02

**FORMALIZED:**

1997-10-10

**ADVERTISED:**

2003-10-29

**REGISTERED:**

2004-10-04

**REGISTRANT:**

CTV Limited  
9 Channel Nine Court  
Scarborough  
M1S 4B5  
ONTARIO

**REPRESENTATIVE FOR SERVICE:**

BEAUDIN & ASSOCIES  
1 Carrefour Alexandre-Graham-Bell  
Édifice A7  
Verdun  
QUÉBEC H3E 3B3

**CURRENT OWNER:**

Bell Media Inc.  
299 Queen Street West  
Toronto  
M5V 2Z9  
ONTARIO

**REPRESENTATIVE FOR SERVICE:**

BEAUDIN & ASSOCIES  
1 Carrefour Alexandre-Graham-Bell  
Édifice A7  
Verdun  
QUÉBEC H3E 3B3

**INTERESTED PARTIES:**

**OPPONENT (CASE CLOSED)**

Chanel S. de R.L.  
{unknown address}

REPRESENTATIVE FOR SERVICE:  
 NORTON ROSE FULBRIGHT CANADA  
 LLP/S.E.N.C.R.L.,S.R.L.  
 1, Place Ville Marie  
 Suite 2500, Montreal  
 QUEBEC H3B 1R1

TRADE-MARK (Word):**FASHION TELEVISION THE CHANNEL**DISCLAIMER TEXT:

The right to the exclusive use of FASHION TELEVISION is disclaimed apart from the trade-mark in respect of the services "production, distribution, recording and development of audio and video tapes, cassettes, Cd's, CD-ROMS, computer discs and video discs." The right to the exclusive use of the word CHANNEL is disclaimed apart from the trade-mark with respect to the services.

INDEX HEADINGS:

FASHION TELEVISION THE CHANNEL

SERVICES:

(1) Television broadcasting services; telecommunication services, namely, television programming and distribution services and interactive electronic communication services, namely the operation of an Internet website for the purpose of providing entertainment services in the nature of news, fashion, pop culture, art, art exhibits, architecture, photography, models, celebrities, fashion trends, designers, designs, fashion shows and other fashion, entertainment and pop culture related topics; providing information and entertainment services via the media of television, namely, television production services; production, distribution, recording and development of television programs, and video tapes.

CLAIMS:

Declaration of Use filed July 05, 2004.

ASSOCIATED MARKS:

TMA341,087 TMA487,980 TMA584,282 TMA616,692 TMA617,318  
 TMA625,055 TMA625,921

Action Information

<u>ACTION</u>	<u>DATE</u>	<u>BF</u>	<u>COMMENTS</u>
Filed	1997-10-02		
Created	1997-10-08		
Formalized	1997-10-10		
Search Recorded	1998-02-26		
Examiner's First Report	1998-03-11	1998-07-11	
Extension of Time	1998-08-12	1999-01-11	Request Letter Date: 1998/07/10
Extension of Time	1999-01-28	1999-07-11	Request Letter Date: 1999/01/11
Extension of Time	1999-07-26	2000-01-11	Request Letter Date: 1999/06/22
Extension of Time	2000-02-01	2000-07-11	Request Letter Date: 2000/01/11
Agent Name Change	2000-02-17		
Rep for Service Name Change	2000-02-17		

Extension of Time	2000-07-27	2001-01-11	Request Letter Date: 2000/06/23
Extension of Time	2001-01-03	2001-07-11	Request Letter Date: 2000/12/11
Extension of Time	2001-07-19	2002-01-11	Request Letter Date: 2001/07/11
Extension of Time	2001-12-13	2002-07-11	Request Letter Date: 2001/11/29
Extension of Time	2002-06-12	2003-01-11	Request Letter Date: 2002/05/23
Correspondence Created	2003-01-20	2003-05-20	
Rep for Service Changed	2003-03-03		From: 2841 To: 6237 / Voir Preuve au dossier/See evidence on File No. 169992
Agent Changed	2003-03-03		From: 2841 To: 6237 / Voir Preuve au dossier/See evidence on File No. 169992
Extension of Time	2003-05-01	2003-11-20	Request Letter Date: 2003/04/15
Approved	2003-09-25		
Extracted for Advertisement	2003-10-15		Vol.50 Issue 2557 2003/10/29
Advertised	2003-10-29		Vol.50 Issue 2557
Opposed	2004-01-08		Opposition Filed.
Opposition Removed	2004-04-30		Opposition/Section 45 Case Number : 1, Opposition/Section 45 Case Closed - Deadline to File SO Expired.
Allowed	2004-05-07		
Allowance Notice Sent	2004-05-07	2004-11-07	
Registered	2004-10-04		
Clerical Correction	2005-03-17		The Register was modified by correcting the disclaimer.
Rep for Service Changed	2008-02-11		From: 6237 To: 12578 / Voir Preuve au dossier/See evidence on File No. 253285
Amendment to Registration	2008-02-11		Name and Address / Voir Preuve au dossier/See evidence on File No. 253285
Rep for Service Changed	2011-09-09		From: 12578 To: 14267 / Voir Preuve au dossier/See evidence on File No. 253285
Amendment to Registration	2011-10-01		Amalgamation / Voir Preuve au dossier/See evidence on File No. 253285
Amendment to Registration	2011-10-01		Name / Voir Preuve au dossier/See evidence on File No. 253285
Amendment to Registration	2013-04-23		Owner Address Change / Voir Preuve au dossier/See evidence on File No. 253285

**FOOTNOTES:****AMENDMENT TO REGISTRATION/MODIFICATION A L'ENREGISTREMENT:**

TYPE OF AMENDMENT/GENRE DE MODIFICATION: Clerical correction  
(Amendment to registration)/Correction (Modification à l'enregistrement)

DATE OF CHANGE/DATE DE CHANGEMENT: 17 mars/Mar 2005

COMMENTS/COMMENTAIRES: The Register was modified by correcting the disclaimer.

**CHANGE IN TITLE/CHANGEMENT EN TITRE:**

TYPE OF CHANGE/GENRE DE CHANGEMENT: Name and Address/Nom et  
adresse

DATE REGISTERED/DATE DE L'ENREGISTREMENT: 11 fév/Feb 2008

DATE OF CHANGE/DATE DE CHANGEMENT: 31 juil/Jul 2007

COMMENTS/COMMENTAIRES: FROM: CHUM LIMITED

TO: CTV Limited

Voir Preuve au dossier/See evidence on File No. 253285

**CHANGE IN TITLE/CHANGEMENT EN TITRE:**

TYPE OF CHANGE/GENRE DE CHANGEMENT: Amalgamation/Fuslonnement

DATE REGISTERED/DATE DE L'ENREGISTREMENT: 01 oct/Oct 2011

DATE OF CHANGE/DATE DE CHANGEMENT: 15 mars/Mar 2011

COMMENTS/COMMENTAIRES: FROM: CTV Limited

TO: CTV Inc.

Voir Preuve au dossier/See evidence on File No. 253285

**CHANGE IN TITLE/CHANGEMENT EN TITRE:**

TYPE OF CHANGE/GENRE DE CHANGEMENT: Name/Nom

DATE REGISTERED/DATE DE L'ENREGISTREMENT: 01 oct/Oct 2011

DATE OF CHANGE/DATE DE CHANGEMENT: 01 avr/Apr 2011

COMMENTS/COMMENTAIRES: FROM: CTV Inc.

TO: Bell Media Inc.

Voir Preuve au dossier/See evidence on File No. 253285

**OWNER ADDRESS CHANGE/CHANGEMENT D'ADRESSE DU PROPRIÉTAIRE:**

DATE REGISTERED/DATE DE L'ENREGISTREMENT: 23 avr/Apr 2013

COMMENTS/COMMENTAIRES: Voir Preuve au dossier/See evidence on  
File No. 253285

[Back to search](#)

[Back](#)

---

Last updated: 2014-12-30



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## Canadian Intellectual Property Office

### Canadian trade-mark data

#### Third-Party Information Liability Disclaimer

[Back to search](#)

The database was last updated on: 2014-12-30

**APPLICATION NUMBER:**  
0857740

**REGISTRATION NUMBER:**  
TMA616692

**STATUS:**

REGISTERED

**FILED:**

1997-10-02

**FORMALIZED:**

1997-10-10

**ADVERTISED:**

2003-10-15

**REGISTERED:**

2004-08-12

**REGISTRANT:**

CTV Limited  
9 Channel Nine Court  
Scarborough  
M1S 4B5  
ONTARIO

**REPRESENTATIVE FOR SERVICE:**

BEAUDIN & ASSOCIES  
1 Carrefour Alexandre-Graham-Bell  
Édifce A7  
Verdun  
QUÉBEC H3E 3B3

**CURRENT OWNER:**

Bell Media Inc.  
299 Queen Street West  
Toronto  
M5V 2Z9  
ONTARIO

**REPRESENTATIVE FOR SERVICE:**

BEAUDIN & ASSOCIES  
1 Carrefour Alexandre-Graham-Bell  
Édifce A7  
Verdun  
QUÉBEC H3E 3B3

**TRADE-MARK (Design):**

# FASHION TELEVISION

## MARK DESCRIPTIVE REFERENCE: FASHION TELEVISION DESIGN

### DISCLAIMER TEXT:

The right to the exclusive use of FASHION TELEVISION is disclaimed apart from the trade-mark in respect of the wares "pre-recorded CD-ROMS which are not software related, pre-recorded computer disks which are not software related and pre-recorded video discs for use in the entertainment and education industries in the nature of news, fashion, pop culture, art, art exhibits, architecture, photography, models, celebrities, fashion trends, designers, designs, fashion shows and other fashion, entertainment and pop culture related topics; pre-recorded audio and video tapes, cassettes and compact discs; printed publications namely manuals, newsletters, brochures, magazines, pamphlets, flyers and postcards" and in respect of the services "production, distribution, recording and development of audio and video tapes, cassettes, CD's, CD-ROMS, computer discs and video discs."

### INDEX HEADINGS: FASHION TELEVISION

### WARES:

(1) Keychains.

### SERVICES:

(1) Television broadcasting services; telecommunication services, namely, television programming and distribution services and interactive electronic communication services, namely the operation of an Internet website for the purpose of providing entertainment services in the nature of news, fashion, pop culture, art, art exhibits, architecture, photography, models, celebrities, fashion trends, designers, designs, fashion shows and other fashion, entertainment and pop culture related topics; providing information and entertainment services via the media of television, namely, television production services; production, distribution, recording and development of television programs, and video tapes.

### CLAIMS:

Declaration of Use filed June 30, 2004.

### ASSOCIATED MARKS:

TMA341,087 TMA487,980 TMA584,282 TMA617,318 TMA621,572  
TMA625,055 TMA625,921

### Action Information

<u>ACTION</u>	<u>DATE</u>	<u>BF</u>	<u>COMMENTS</u>
Filed	1997-10-02		
Created	1997-10-08		
Formalized	1997-10-10		
Search Recorded	1998-02-26		
Examiner's First Report	1998-03-11	1998-07-11	
Extension of Time	1998-08-12	1999-01-11	Request Letter Date: 1998/07/10

Extension of Time	1999-01-28	1999-07-11	Request Letter Date: 1999/01/11
Extension of Time	1999-07-26	2000-01-11	Request Letter Date: 1999/06/22
Extension of Time	2000-02-01	2000-07-11	Request Letter Date: 2000/01/11
Agent Name Change	2000-02-17		
Rep for Service Name Change	2000-02-17		
Extension of Time	2000-07-27	2001-01-11	Request Letter Date: 2000/06/23
Extension of Time	2001-01-03	2001-07-11	Request Letter Date: 2000/12/11
Extension of Time	2001-07-19	2002-01-11	Request Letter Date: 2001/07/11
Extension of Time	2001-12-13	2002-07-11	Request Letter Date: 2001/11/29
Extension of Time	2002-06-12	2003-01-11	Request Letter Date: 2002/05/23
Correspondence Created	2003-01-20	2003-05-20	
Rep for Service Changed	2003-03-03		From: 2841 To: 6237 / Voir Preuve au dossier/See evidence on File No. 169992
Agent Changed	2003-03-03		From: 2841 To: 6237 / Voir Preuve au dossier/See evidence on File No. 169992
Extension of Time Approved	2003-05-01	2003-11-20	Request Letter Date: 2003/04/15
Extracted for Advertisement	2003-09-16		
Advertised	2003-10-01		Vol.50 Issue 2555 2003/10/15
Allowed	2003-10-15		Vol.50 Issue 2555
Allowance Notice Sent	2004-01-02	2004-07-02	
Registered	2004-01-02		
Rep for Service Changed	2004-08-12		
Amendment to Registration	2008-02-11		From: 6237 To: 12578 / Voir Preuve au dossier/See evidence on File No. 253285
Rep for Service Changed	2008-02-11		Name and Address / Voir Preuve au dossier/See evidence on File No. 253285
Amendment to Registration	2011-09-09		From: 12578 To: 14267 / Voir Preuve au dossier/See evidence on File No. 253285
Amendment to Registration	2011-10-01		Amalgamation / Voir Preuve au dossier/See evidence on File No. 253285
Amendment to Registration	2011-10-01		Name / Voir Preuve au dossier/See evidence on File No. 253285
Amendment to Registration	2013-04-23		Owner Address Change / Voir Preuve au dossier/See evidence on File No. 253285

**FOOTNOTES:****CHANGE IN TITLE/CHANGEMENT EN TITRE:**

TYPE OF CHANGE/GENRE DE CHANGEMENT: Name and Address/Nom et adresse

DATE REGISTERED/DATE DE L'ENREGISTREMENT: 11 fév/Feb 2008

DATE OF CHANGE/DATE DE CHANGEMENT: 31 juil/Jul 2007

COMMENTS/COMMENTAIRES: FROM: CHUM LIMITED

TO: CTV Limited

Voir Preuve au dossier/See evidence on File No. 253285

**CHANGE IN TITLE/CHANGEMENT EN TITRE:**

TYPE OF CHANGE/GENRE DE CHANGEMENT: Amalgamation/Fusionnement

DATE REGISTERED/DATE DE L'ENREGISTREMENT: 01 oct/Oct 2011

DATE OF CHANGE/DATE DE CHANGEMENT: 15 mars/Mar 2011

COMMENTS/COMMENTAIRES: FROM: CTV Limited

TO: CTV Inc.

Voir Preuve au dossier/See evidence on File No. 253285

**CHANGE IN TITLE/CHANGEMENT EN TITRE:**

TYPE OF CHANGE/GENRE DE CHANGEMENT: Name/Nom

DATE REGISTERED/DATE DE L'ENREGISTREMENT: 01 oct/Oct 2011

DATE OF CHANGE/DATE DE CHANGEMENT: 01 avr/Apr 2011

COMMENTS/COMMENTAIRES: FROM: CTV Inc.

TO: Bell Media Inc.

Voir Preuve au dossier/See evidence on File No. 253285

**OWNER ADDRESS CHANGE/CHANGEMENT D'ADRESSE DU PROPRIÉTAIRE:**

DATE REGISTERED/DATE DE L'ENREGISTREMENT: 23 avr/Apr 2013

COMMENTS/COMMENTAIRES: Voir Preuve au dossier/See evidence on File No. 253285

[Back to search](#)

[Back](#)

---

Last updated: 2014-12-30



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## Canadian Intellectual Property Office

### Canadian trade-mark data

#### Third-Party Information Liability Disclaimer

[Back to search](#)

The database was last updated on: 2014-12-30

**APPLICATION NUMBER:**  
0559746

**REGISTRATION NUMBER:**  
TMA341087

**STATUS:**

REGISTERED

**FILED:**

1986-03-17

**ADVERTISED:**

1987-11-11

**REGISTERED:**

1988-06-03

**REGISTRANT:**

CTV Limited  
9 Channel Nine Court  
Scarborough  
M1S 4B5  
ONTARIO

**REPRESENTATIVE FOR SERVICE:**

BEAUDIN & ASSOCIES  
1 Carrefour Alexandre-Graham-Bell  
Édifice A7  
Verdun  
QUÉBEC H3E 3B3

**CURRENT OWNER:**

Bell Media Inc.  
299 Queen Street West  
Toronto  
M5V 2Z9  
ONTARIO

**REPRESENTATIVE FOR SERVICE:**

BEAUDIN & ASSOCIES  
1 Carrefour Alexandre-Graham-Bell  
Édifice A7  
Verdun  
QUÉBEC H3E 3B3

**TRADE-MARK (Design):**



**MARK DESCRIPTIVE REFERENCE:**  
**FT & DESIGN**

**DISCLAIMER TEXT:**

The right to the exclusive use of the words FASHION and TELEVISION is disclaimed apart from the trade-mark.

**INDEX HEADINGS:**

FT FASHIONTELEVISION

FASHION TELEVISION

**VIENNA INFORMATION:**

**VIENNA INFORMATION**

**Code Description**

26.4.2 Rectangles

26.4.5 One quadrilateral

26.4.18 Quadrilaterals containing one or more letters

26.4.24 Quadrilaterals with dark surfaces or parts of surfaces

**WARES:**

(1) Buttons, stickers and bumper stickers.

**SERVICES:**

(1) Producing, broadcasting, recording and distribution of television programmes and informing and entertaining through the medium of television.

**CLAIMS:**

Used in CANADA since at least as early as October 21, 1985 on services.

Declaration of Use filed March 31, 1988 on wares.

**ASSOCIATED MARKS:**

TMA341,088 TMA487,980 TMA584,282 TMA616,692 TMA617,318

TMA621,572 TMA625,055 TMA625,921

**Action Information**

<b>ACTION</b>	<b>DATE</b>	<b>BF</b>	<b>COMMENTS</b>
Filed	1986-03-17		
Advertised	1987-11-11		Vol.34 Issue 1724
Allowed	1988-01-15		
Registered	1988-06-03		
Agent Name Change	2000-06-07		
Rep for Service Name Change	2000-06-07		
Rep for Service Changed	2000-09-20		From: 3494 To: 2841
Rep for Service Changed	2003-03-03		From: 2841 To: 6237 / Voir Preuve au dossier/See evidence on File No. 169992
Renewed	2003-06-03		DP:2003/06/09 RD:2003/05/28 RR: (6237) BORDEN LADNER GERVAIS LLP
Rep for Service Changed	2008-02-11		From: 6237 To: 12578 / Voir Preuve au dossier/See evidence on File No. 253285
Amendment to Registration	2008-02-11		Name and Address / Voir Preuve au dossier/See evidence on File No. 253285
Rep for Service Changed	2011-09-09		From: 12578 To: 14267 / Voir Preuve au dossier/See evidence on File No. 253285
Amendment to Registration	2011-10-01		Amalgamation / Voir Preuve au dossier/See evidence on File No. 253285
Amendment to Registration	2011-10-01		Name / Voir Preuve au dossier/See evidence on File No. 253285
Amendment to Registration	2013-04-23		Owner Address Change / Voir Preuve au dossier/See evidence on File No. 253285

**FOOTNOTES:****CHANGE IN TITLE/CHANGEMENT EN TITRE:**

TYPE OF CHANGE/GENRE DE CHANGEMENT: Name and Address/Nom et adresse

DATE REGISTERED/DATE DE L'ENREGISTREMENT: 11 fév/Feb 2008

DATE OF CHANGE/DATE DE CHANGEMENT: 31 juil/Jul 2007

COMMENTS/COMMENTAIRES: FROM: CHUM LIMITED,

TO: CTV Limited

Voir Preuve au dossier/See evidence on File No. 253285

**CHANGE IN TITLE/CHANGEMENT EN TITRE:**

TYPE OF CHANGE/GENRE DE CHANGEMENT: Amalgamation/Fusionnement

DATE REGISTERED/DATE DE L'ENREGISTREMENT: 01 oct/Oct 2011

DATE OF CHANGE/DATE DE CHANGEMENT: 15 mars/Mar 2011

COMMENTS/COMMENTAIRES: FROM: CTV Limited

TO: CTV Inc.

Voir Preuve au dossier/See evidence on File No. 253285

**CHANGE IN TITLE/CHANGEMENT EN TITRE:**

TYPE OF CHANGE/GENRE DE CHANGEMENT: Name/Nom

DATE REGISTERED/DATE DE L'ENREGISTREMENT: 01 oct/Oct 2011

DATE OF CHANGE/DATE DE CHANGEMENT: 01 avr/Apr 2011

COMMENTS/COMMENTAIRES: FROM: CTV Inc.

TO: Bell Media Inc.

Voir Preuve au dossier/See evidence on File No. 253285

**OWNER ADDRESS CHANGE/CHANGEMENT D'ADRESSE DU PROPRIÉTAIRE:**

DATE REGISTERED/DATE DE L'ENREGISTREMENT: 23 avr/Apr 2013

COMMENTS/COMMENTAIRES: Voir Preuve au dossier/See evidence on  
File No. 253285

[Back to search](#)

[Back](#)

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Last updated: 2014-12-30



Canadian Intellectual  
Property Office

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Canada

## Canadian Intellectual Property Office

### Canadian trade-mark data

#### Third-Party Information Liability Disclaimer

[Back to search](#)

The database was last updated on: 2014-12-30

**APPLICATION NUMBER:**

1085086

**REGISTRATION NUMBER:**

TMA584282

**STATUS:**

REGISTERED

**FILED:**

2000-12-04

**FORMALIZED:**

2001-01-04

**ADVERTISED:**

2003-03-05

**REGISTERED:**

2003-06-25

**REGISTRANT:**

CTV Limited  
9 Channel Nine Court  
Scarborough  
M1S 4B5  
ONTARIO

**REPRESENTATIVE FOR SERVICE:**

BEAUDIN & ASSOCIES  
1 Carrefour Alexandre-Graham-Bell  
Édifice A7  
Verdun  
QUÉBEC H3E 3B3

**CURRENT OWNER:**

Bell Media Inc.  
299 Queen Street West  
Toronto  
M5V 2Z9  
ONTARIO

**REPRESENTATIVE FOR SERVICE:**

BEAUDIN & ASSOCIES  
1 Carrefour Alexandre-Graham-Bell  
Édifice A7  
Verdun  
QUÉBEC H3E 3B3

**TRADE-MARK (Word):**

**FASHION TELEVISION**

**INDEX HEADINGS:**

FASHION TELEVISION

**SERVICES:**

(1) Television broadcasting services; telecommunication services, namely, television programming and distribution services and interactive electronic communication services, namely the operation of an Internet website for the purpose of providing entertainment services in the nature of news, fashion, pop culture, art, art exhibits, architecture, photography, models, celebrities, fashion trends, designers, designs, fashion shows and other fashion, entertainment and pop culture related topics; providing information and entertainment services via the media of television, namely, television production services.

**CLAIMS:**

Used in CANADA since at least as early as April 1985.  
Registrability Recognized under Section 12(2) of the Trade-marks Act.

**ASSOCIATED MARKS:**

TMA341,087 TMA487,980 TMA616,692 TMA617,318 TMA621,572  
TMA625,055 TMA625,921

**Action Information**

<b><u>ACTION</u></b>	<b><u>DATE</u></b>	<b><u>BF</u></b>	<b><u>COMMENTS</u></b>
Filed	2000-12-04		
Created	2000-12-13		
Formalized	2001-01-04		
Correspondence Created	2001-07-04		
Search Recorded	2002-07-08		
Examiner's First Report	2002-07-08	2002-11-08	
Correspondence Created	2002-11-26	2003-03-26	
Approved	2003-01-24		
Extracted for Advertisement	2003-02-20		Vol.50 Issue 2523 2003/03/05
Rep for Service Changed	2003-03-03		From: 2841 To: 6237 / Voir Preuve au dossier/See evidence on File No. 169992
Agent Changed	2003-03-03		From: 2841 To: 6237 / Voir Preuve au dossier/See evidence on File No. 169992
Advertised	2003-03-05		Vol.50 Issue 2523
Allowed	2003-05-23		
Allowance Notice Sent	2003-05-23	2003-11-23	
Registered	2003-06-25		
Rep for Service Changed	2008-02-11		From: 6237 To: 12578 / Voir Preuve au dossier/See evidence on File No. 253285
Amendment to Registration	2008-02-11		Name and Address / Voir Preuve au dossier/See evidence on File No. 253285

Rep for Service Changed	2011-09-09	From: 12578 To: 14267 / Voir Preuve au dossier/See evidence on File No. 253285
Amendment to Registration	2011-10-01	Amalgamation / Voir Preuve au dossier/See evidence on File No. 253285
Amendment to Registration	2011-10-01	Name / Voir Preuve au dossier/See evidence on File No. 253285
Amendment to Registration	2013-04-23	Owner Address Change / Voir Preuve au dossier/See evidence on File No. 253285

**FOOTNOTES:****CHANGE IN TITLE/CHANGEMENT EN TITRE:**

TYPE OF CHANGE/GENRE DE CHANGEMENT: Name and Address/Nom et adresse

DATE REGISTERED/DATE DE L'ENREGISTREMENT: 11 fév/Feb 2008

DATE OF CHANGE/DATE DE CHANGEMENT: 31 juil/Jul 2007

COMMENTS/COMMENTAIRES: FROM: CHUM LIMITED,  
TO: CTV Limited

Voir Preuve au dossier/See evidence on File No. 253285

**CHANGE IN TITLE/CHANGEMENT EN TITRE:**

TYPE OF CHANGE/GENRE DE CHANGEMENT: Amalgamation/Fusionnement

DATE REGISTERED/DATE DE L'ENREGISTREMENT: 01 oct/Oct 2011

DATE OF CHANGE/DATE DE CHANGEMENT: 15 mars/Mar 2011

COMMENTS/COMMENTAIRES: FROM: CTV Limited  
TO: CTV Inc.

Voir Preuve au dossier/See evidence on File No. 253285

**CHANGE IN TITLE/CHANGEMENT EN TITRE:**

TYPE OF CHANGE/GENRE DE CHANGEMENT: Name/Nom

DATE REGISTERED/DATE DE L'ENREGISTREMENT: 01 oct/Oct 2011

DATE OF CHANGE/DATE DE CHANGEMENT: 01 avr/Apr 2011

COMMENTS/COMMENTAIRES: FROM: CTV Inc.

TO: Bell Media Inc.

Voir Preuve au dossier/See evidence on File No. 253285

**OWNER ADDRESS CHANGE/CHANGEMENT D'ADRESSE DU PROPRIÉTAIRE:**

DATE REGISTERED/DATE DE L'ENREGISTREMENT: 23 avr/Apr 2013

COMMENTS/COMMENTAIRES: Voir Preuve au dossier/See evidence on File No. 253285

[Back to search](#)
[Back](#)

Last updated: 2014-12-30



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Industry Canada

Office de la propriété  
intellectuelle du Canada  
Un organisme  
d'Industrie Canada



## Canadian Intellectual Property Office

### Canadian trade-mark data

#### Third-Party Information Liability Disclaimer

[Back to search](#)

The database was last updated on: 2014-12-30

**APPLICATION NUMBER:**  
0810139

**REGISTRATION NUMBER:**  
TMA487980

**STATUS:**

REGISTERED

**FILED:**

1996-04-17

**FORMALIZED:**

1996-05-01

**ADVERTISED:**

1997-08-06

**REGISTERED:**

1998-01-21

**REGISTRANT:**

CTV Limited  
9 Channel Nine Court  
Scarborough  
M1S 4B5  
ONTARIO

**REPRESENTATIVE FOR SERVICE:**

BEAUDIN & ASSOCIES  
1 Carrefour Alexandre-Graham-Bell  
Édifice A7  
Verdun  
QUÉBEC H3E 3B3

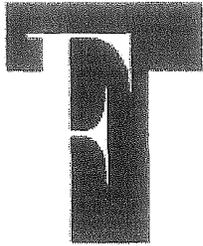
**CURRENT OWNER:**

Bell Media Inc.  
299 Queen Street West  
Toronto  
M5V 2Z9  
ONTARIO

**REPRESENTATIVE FOR SERVICE:**

BEAUDIN & ASSOCIES  
1 Carrefour Alexandre-Graham-Bell  
Édifice A7  
Verdun  
QUÉBEC H3E 3B3

**TRADE-MARK (Design):**



**FASHION  
TELEVISION**

**MARK DESCRIPTIVE REFERENCE:**  
**FT FASHION TELEVISION & DESIGN**

**DISCLAIMER TEXT:**

The right to the exclusive use of the words FASHION and TELEVISION is disclaimed apart from the trade-mark.

**INDEX HEADINGS:**

FT FASHION TELEVISION

**VIENNA INFORMATION:**

**VIENNA INFORMATION**

**Code Description**

27.5.1 Letters presenting a special form of writing

27.5.22 Monograms formed of intertwined, overlapping or otherwise combined letters

**WARES:**

(1) Keychains, purse size mirrors, balloons, plastic shopping bags, canvas shopping bags, pens, magnetic memo boards, umbrellas, aprons, lighters, beach balls, visors, flying discs, keepmates namely plastic carrying containers for wearing around the neck, beach towels, mugs, wearing apparel namely hats, socks, gloves, ballcaps, hat visors, turtle necks, sweaters, jackets and infant sleepers; pre-recorded music cassettes, rulers, clocks, calculators, lapel pins, novelty buttons, stickers, banners, ice scrapers, oven mitts, letter openers, beach mats, record keeping kits namely monthly fillers and record forms; pre-recorded CDs; pre-recorded CD-ROMS for use in the entertainment and education industries; pre-recorded computer disks; printed publications namely manuals, books, newsletters, brochures, magazines, pamphlets, flyers and postcards.

(2) Pre-recorded videotapes.

(3) T-shirts and sweatshirts.

**SERVICES:**

(1) Television broadcasting services, telecommunications services and interactive electronic communications services providing information and entertainment services via the media of television, satellite, computer, telephone, audio, video, electronic mail and the Internet production, distribution, recording and development of television programs, videotapes, CDs, CD-ROMS and computer disks.

**CLAIMS:**

Used in CANADA since at least as early as September 1992 on wares (2) and on services.

Used in CANADA since at least as early as March 01, 1996 on wares (3).  
Declaration of Use filed December 23, 1997 on wares (1).

**ASSOCIATED MARKS:**

TMA341,087 TMA584,282 TMA616,692 TMA617,318 TMA621,572  
TMA625,055 TMA625,921

**Action Information**

<b><u>ACTION</u></b>	<b><u>DATE</u></b>	<b><u>BF</u></b>	<b><u>COMMENTS</u></b>
Filed	1996-04-17		
Created	1996-04-23		
Formalized	1996-05-01		
Search Recorded	1996-06-26		
Examiner's First Report	1996-10-10		
Correspondence Created	1996-10-10	1997-03-10	
Correspondence Created	1997-02-19	1997-06-19	
Approved	1997-07-03		
Advertised	1997-08-06		Vol.44 Issue 2232
Allowed	1997-10-31		
Allowance Notice Sent	1997-10-31	1999-04-17	
Registered	1998-01-21		
Agent Name Change	2000-02-17		
Rep for Service Name Change	2000-02-17		
Rep for Service Changed	2003-03-03		From: 2841 To: 6237 / Voir Preuve au dossier/See evidence on File No. 169992
Rep for Service Changed	2008-02-11		From: 6237 To: 12578 / Voir Preuve au dossier/See evidence on File No. 253285
Amendment to Registration	2008-02-11		Name and Address / Voir Preuve au dossier/See evidence on File No. 253285
Rep for Service Changed	2011-09-09		From: 12578 To: 14267 / Voir Preuve au dossier/See evidence on File No. 253285
Amendment to Registration	2011-10-01		Amalgamation / Voir Preuve au dossier/See evidence on File No. 253285
Amendment to Registration	2011-10-01		Name / Voir Preuve au dossier/See evidence on File No. 253285
Renewed	2013-01-21		DP:2012/11/29 RD:2012/11/28 RR: (14267) BEAUDIN & ASSOCIES
Amendment to Registration	2013-04-23		Owner Address Change / Voir Preuve au dossier/See evidence on File No. 253285

**FOOTNOTES:****CHANGE IN TITLE/CHANGEMENT EN TITRE:**

TYPE OF CHANGE/GENRE DE CHANGEMENT: Name and Address/Nom et

adresse

DATE REGISTERED/DATE DE L'ENREGISTREMENT: 11 fév/Feb 2008

DATE OF CHANGE/DATE DE CHANGEMENT: 31 juil/Jul 2007

COMMENTS/COMMENTAIRES: FROM: CHUM LIMITED

TO: CTV Limited

Voir Preuve au dossier/See evidence on File No. 253285

**CHANGE IN TITLE/CHANGEMENT EN TITRE:**

TYPE OF CHANGE/GENRE DE CHANGEMENT: Amalgamation/Fusionnement

DATE REGISTERED/DATE DE L'ENREGISTREMENT: 01 oct/Oct 2011

DATE OF CHANGE/DATE DE CHANGEMENT: 15 mars/Mar 2011

COMMENTS/COMMENTAIRES: FROM: CTV Limited

TO: CTV Inc.

Voir Preuve au dossier/See evidence on File No. 253285

**CHANGE IN TITLE/CHANGEMENT EN TITRE:**

TYPE OF CHANGE/GENRE DE CHANGEMENT: Name/Nom

DATE REGISTERED/DATE DE L'ENREGISTREMENT: 01 oct/Oct 2011

DATE OF CHANGE/DATE DE CHANGEMENT: 01 avr/Apr 2011

COMMENTS/COMMENTAIRES: FROM: CTV Inc.

TO: Bell Media Inc.

Voir Preuve au dossier/See evidence on File No. 253285

**OWNER ADDRESS CHANGE/CHANGEMENT D'ADRESSE DU PROPRIÉTAIRE:**

DATE REGISTERED/DATE DE L'ENREGISTREMENT: 23 avr/Apr 2013

COMMENTS/COMMENTAIRES: Voir Preuve au dossier/See evidence on  
File No. 253285

[Back to search](#)

[Back](#)

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Last updated: 2014-12-30

Schedule "H" – Previously Assigned Trademarks

Country	Mark	Class	Registration Number
Israel		38	Application 124783
Israel		41	Application 124784
Singapore	fashion television tf ft	38	Application T98009289B
Singapore	FASHION TELEVISION T F T	41	Application T98009290F

40

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Schedule "I" – Previous Assignment Agreements

41

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**Schedule "I" – Previous assignment Agreements**

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BELLMEDIA000077

DATED THIS 1ST DAY OF DECEMBER 2014

BETWEEN

CTV LIMITED ("THE ASSIGNOR")

AND

FASHION TELEVISION INTERNATIONAL LIMITED ("THE ASSIGNEE")

\*\*\*\*\*

ASSIGNMENT

\*\*\*\*\*

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BELLMEDIA000078

THIS ASSIGNMENT is made on the 1st day of December 2014

BETWEEN

**CTV LIMITED**  
9 Channel Nine Court, Scarborough, Ontario, M1S 4B5, Canada

- "Assignor" -

AND

**FASHION TELEVISION INTERNATIONAL LIMITED**  
20-22 Wenlock Road, London N1 7GU, United Kingdom

- "Assignee" -

WHEREAS, the Assignor is the registered proprietor in Israel of the trademarks, particulars whereof are set out below:-

No	TRADEMARK	REGISTRATION NO.	CLASS
1		124783	38
2		124784	41

- hereinafter referred to as the "Registered Marks" -

AND WHEREAS the Assignor has agreed for the consideration hereinafter appearing to assign and transfer unto the Assignees the said Registered Marks together with the whole of the goodwill of the business in the goods with respect for which the said Registered Marks are registered and symbolised by the said Registered Marks.

NOW THIS ASSIGNMENT WITNESSETH as follows:-

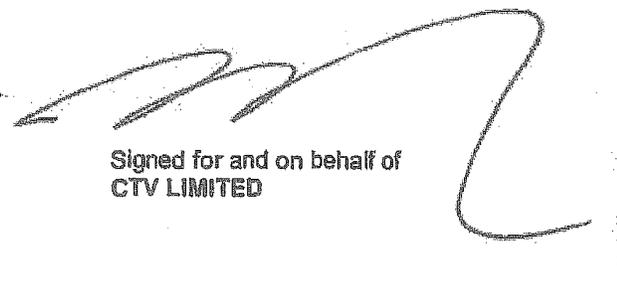
In pursuance of the said agreement and in consideration of the premises and of the sum of One Hundred British Pounds (GBP £100.00), the receipt and sufficiency whereof the Assignor hereby

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BELLMEDIA000079

acknowledges, the Assignor as legal and beneficial **HEREBY ASSIGNS AND TRANSFERS ABSOLUTELY** unto the Assignee all its property right title and interest in and to the said Registered Marks in Israel, including all statutory and common law rights attaching thereto and the right to sue for past infringements including passing off and to retain any damages, interest, profits and costs awarded, together with the whole of the goodwill attaching to the said Registered Marks and the goodwill of the business in the goods for which the said Registered Marks had been registered and symbolised by the said Registered Marks, **TO HOLD USE EXERCISE AND ENJOY** the said Registered Marks unto the Assignee and its successors and assigns absolutely.

**IN WITNESS WHEREOF** this Assignment has been signed on behalf of each party by its duly authorised representatives on the day and year first above written.



Signed for and on behalf of  
CTV LIMITED

Signed for and on behalf of  
FASHION TELEVISION INTERNATIONAL  
LIMITED )  
)  
) Gwen Jayme  
) Corporate Secretary

DATED THIS 1ST DAY OF DECEMBER

BETWEEN

CTV LIMITED ("THE ASSIGNOR")

AND

FASHION TELEVISION (ASIA) PTE LTD ("THE ASSIGNEE")

\*\*\*\*\*

ASSIGNMENT

\*\*\*\*\*

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BELLMEDIA000081

THIS ASSIGNMENT is made on the 1st day of December 2014

BETWEEN

**CTV LIMITED**  
 9 Channel Nine Court, Scarborough, Ontario, M1S 4B5, Canada

- hereinafter "Assignor" -

AND

**FASHION TELEVISION (ASIA) PTE LTD**  
 26 Eng Hoon Street, Singapore 169776

- hereinafter "Assignee" -

WHEREAS, the Assignor is the registered proprietor in Singapore of the trademarks, particulars whereof are set out below:-

No	TRADEMARK	REGISTRATION NO.	CLASS
1		T9809289B	38
2		T9809290F	41

- hereinafter referred to as the "Registered Marks" -

AND WHEREAS the Assignor has agreed for the consideration hereinafter appearing to assign and transfer unto the Assignees the said Registered Marks together with the whole of the goodwill of the business in the goods with respect for which the said Registered Marks are registered and symbolised by the said Registered Marks.

NOW THIS ASSIGNMENT WITNESSETH as follows:-

In pursuance of the said agreement and in consideration of the premises and of the sum of Singapore One Hundred Dollars (S\$100.00), the receipt and sufficiency whereof the Assignor hereby acknowledges, the Assignor as legal and beneficial **HEREBY ASSIGNS AND TRANSFERS ABSOLUTELY** unto the Assignee all its property right title and interest in and to the said Registered Marks in Singapore, including all statutory and common law rights attaching thereto and the right to sue for past infringements including passing off and to retain any damages, interest, profits and costs awarded, together with the whole of the goodwill attaching to the said Registered Marks and the goodwill of the business in the goods for which the said Registered Marks had been registered and symbolised by the said Registered Marks, **TO HOLD USE EXERCISE AND ENJOY** the said Registered Marks unto the Assignee and its successors and assigns absolutely.

Execution Copy

IN WITNESS WHEREOF this Assignment has been signed on behalf of each party by its duly authorised representatives on the day and year first above written.



Signed for and on behalf of  
CTV LIMITED

)  
)  
)  
)

In the presence of



)  
)  
)  
)

Signed for and on behalf of  
FASHION TELEVISION (ASIA) PTE LTD

)  
)  
)  
)

Gwen Jayme  
Corporate Secretary

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BELLMEDIA000083