

Federal Court



CANADA

Cour fédérale

Date: 20080609

Docket T-413-06

Ottawa, Ontario, June 9, 2008

PRESENT: Madam Prothonotary Roza Aronovitch

BETWEEN:

DESTINY MEDIA TECHNOLOGIES, INC. and  
DESTINY SOFTWARE PRODUCTIONS, INC.

Plaintiffs

- and -

MUSICRYPT INC.

Defendant

AND BETWEEN:

MUSICRYPT INC.

Plaintiff by Counterclaim

- and -

DESTINY MEDIA TECHNOLOGIES, INC.,  
DESTINY SOFTWARE PRODUCTIONS, INC.,  
PROMO ONLY, INC. and PROMO ONLY CD'S INC.

Defendants by Counterclaim

**ORDER**

UPON a motion by the Plaintiffs/Defendants by Counterclaim Destiny Media Technologies, Inc. and Destiny Software Productions, Inc. (collectively, "Destiny"), and the Defendant by Counterclaim Promo Only, Inc. ("Promo Only") for an Order to compel the Defendant/Plaintiff by Counterclaim Musicrypt Inc. ("Musicrypt") to

provide answers to questions asked on the examinations for discovery of Musiccrypt's representative, Mr. John Heaven, and the other two inventors of the patent in issue, Mr. Wojtek Hoch and Mr. Clifford Hunt;

**AND UPON** reviewing the notice of motion, the affidavit of June Dowd sworn March 7, 2008, the affidavit of Brenda Herbison sworn May 20, 2008, and the written representations of the parties;

**AND UPON BEING ADVISED** that Musiccrypt has agreed to provide answers to:

Question 18;

Question 27 (limited to Musiccrypt's knowledge and limited to the secure distribution of digital files from one business to another);

Question 28 (accepting the definition of "digital file" as set out in the question, limited to Musiccrypt's knowledge, limited to the time frame set out in question 27 and limited to the secure distribution of digital files from one business to another);

Questions 33, 34, 40 and 41; and

Question 42 (limited to documents that Musiccrypt is aware of),

as set out in Destiny and Promo Only's Undertakings and Refusals Chart attached to the Destiny and Promo Only's Motion Record dated March 7, 2008

**AND UPON BEING ADVISED** that Destiny and Promo Only have withdrawn Questions 14 and 39, and the latter half of Questions 37 and 38;

**AND UPON** hearing the oral representations of the parties;

**THE COURT ORDERS** that:

1. Mr. John Heaven, as representative of Musicrypt and named inventor, shall provide, in writing within 60 days of this Order, answers to the following questions as set out in Destiny and Promo Only's Undertakings and Refusals Chart attached to Destiny and Promo Only's Motion Record dated March 7, 2008:

- (a) Questions 2, 3, 4, and 9 in Category "A";
- (b) With respect to Question 7 in Category "A", Mr. Heaven shall provide his understanding of how the system depicted in Figure 1 of Canadian Patent 2,407,774 (the "774 Patent") works.
- (c) With respect to Question 17 in Category "B", Mr. Heaven shall answer the question: "Is the content being delivered critical to the functioning of the system on page 1 of Exhibit 3?"
- (d) Questions 19(c), (d), (g), and 20 in Category "B";
- (e) Questions 43 and 44 in Category "E";
- (f) Questions 47 in Category "F";

- (g) With respect to Questions 48 and 49 in Category "F", Mr. Heaven shall answer the questions by providing those aspects of the respective license agreements referred to that deal with the scope of licensed use and any indication that the system described in the claims of the '774 Patent was contemplated;
- (h) With respect to question 50 in Category "F", Mr. Heaven shall answer the question by providing those aspects of the SQL license agreement that deal with the scope of licensed use and, in particular, any indication that there is a limit on the number of databases that can be used; and
- (i) With respect to question 55 in Category "H", Mr. Heaven shall answer the question: "What is the factual basis for the allegation at paragraph 1(c) of the Statement of Defence and Counterclaim that Destiny and Promo Only have employed a method that verifies the identity of the recipient and verifies that the distribution list includes that recipient?" .

2. Mr. Clifford Hunt, as a named inventor of the '774 Patent, shall provide, in writing within 60 days of this Order, answers to the following questions as set out in Destiny and Promo Only's Undertakings and Refusals Chart attached to Destiny and Promo Only's Motion Record dated March 7, 2008

- (a) Questions 29 and 30 in Category "C"; and
- (b) Question 45 in Category "E".

3. Mr. Wojtek Hock, as a named inventor of the '774 Patent, shall provide, in writing within 60 days of this Order, answers to the following questions as set out in Destiny and Promo Only's Undertakings and Refusals Chart attached to Destiny and Promo Only's Motion Record dated March 7, 2008:

- (a) Questions 31, 32, and 35 in Category "C"; and
- (b) Question 46 in Category "E".

4. The following questions need not be answered:

- (a) By Mr. Heaven:
  - (i) 1, 5, 6 and 8 in Category "A";
  - (ii) 19(a), (b), (e), (f), (h), 21, 22, 23, 24, 25 and 26 in Category "B";
  - (iii) 36, first half of 37 and first half of 38 in Category "D";
  - (iv) 51 and 52 in Category "G"; and
  - (v) 53 and 54 in Category "H";
- (b) By Mr. Hunt: 10, 11, 12 and 13 in Category "A"; and

(c) By Mr. Hoch: 15 and 16 in Category "A".

5. Costs of this motion shall be in the cause.

"R. Aronovitch"

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Prothonotary