

**CITATION:** Dish Network LLC v. Ramkissoon, 2010 ONSC 761  
**COURT FILE NO.:** 09-8091-00CL  
**DATE:** 20100202

**SUPERIOR COURT OF JUSTICE – ONTARIO**

**(COMMERCIAL LIST)**

**RE:                    DISH NETWORK LLC, ECHOSTAR TECHNOLOGIES LLC AND  
NAGRASTAR LLC (Plaintiffs) v. RAVINDRANAATH RAMKISSOON  
a.k.a RAVIN RAMKISSOON, RAVINDRANAUGH RAMKISSOON  
a.k.a. DIGITAL, RAVINDRANAATH RAMKISSOON a.k.a.  
THEDIGITALSTORE, RAVINDRANAATH RAMKISSOON c.o.b. as  
www.thedigitalstore.com, RAVINDRANAATH RAMKISSOON c.o.b. as  
www.nfusionteam.com, RAVINDRANAATH RAMKISSOON C.O.B. as  
www.canadasat.com, RAVINDRANAATH RAMKISSOON c.o.b. as  
www.dummychat.com, RAVINDRANAATH RAMKISSOON c.o.b. as  
www.infusioncanada.com, RAVINDRANAATH RAMKISSOON c.o.b. as  
www.infusioncanada.ca, RAVINDRANAUGH RAMKISSOON c.o.b. as  
www.nfusiononline.com, RAVINDRANAUGH RAMKISSOON c.o.b. as  
www.nfusionrepair.com, RAVINDRANAATH RAMKISSOON c.o.b. as  
www.nfusionwarrantycenter.com, RAVINDRANAUGH RAMKISSOON  
c.o.b. as www.nuvenio.ca, RAVINDRANAUGH RAMKISSOON c.o.b. as  
www.infusiondepo.com, RAVINDRANAUGH RAMKISSOON c.o.b. as  
DIGITAL R US, ANTHONY RAMKISSOON, ROSELINE  
RAMKISSOON, DIGITAL STORE INC., E-CANADA SOLUTIONS  
INC., JOHN DOE, JANE DOE and other persons unknown who have  
conspired with the name Defendants (Defendants)**

**AND:**

**COURT FILE NO.: 09-8094-00CL**

**BELL EXPRESSVU LIMITED PARTNERSHIP (Plaintiff) v.  
RAVINDRANAATH RAMKISSOON a.k.a RAVIN RAMKISSOON,  
RAVINDRANAUGH RAMKISSOON a.k.a. DIGITAL,  
RAVINDRANAATH RAMKISSOON a.k.a. THEDIGITALSTORE,  
RAVINDRANAATH RAMKISSOON c.o.b. as www.thedigitalstore.com,  
RAVINDRANAATH RAMKISSOON c.o.b. as www.nfusionteam.com,  
RAVINDRANAATH RAMKISSOON C.O.B. as www.canadasat.com,  
RAVINDRANAATH RAMKISSOON c.o.b. as www.dummychat.com,  
RAVINDRANAATH RAMKISSOON c.o.b. as www.infusioncanada.com,  
RAVINDRANAATH RAMKISSOON c.o.b. as www.infusioncanada.ca,  
RAVINDRANAUGH RAMKISSOON c.o.b. as www.nfusiononline.com,  
RAVINDRANAUGH RAMKISSOON c.o.b. as www.nfusionrepair.com,**

**RAVINDRANAATH RAMKISSOON c.o.b. as  
www.nfusionwarrantycenter.com, RAVINDRANAUGH RAMKISSOON  
c.o.b. as www.nuvenio.ca, RAVINDRANAUGH RAMKISSOON c.o.b. as  
www.infusiondepo.com, RAVINDRANAUGH RAMKISSOON c.o.b. as  
DIGITAL R US, ANTHONY RAMKISSOON, ROSELINE  
RAMKISSOON, DIGITAL STORE INC., E-CANADA SOLUTIONS  
INC., JOHN DOE, JANE DOE and other persons unknown who have  
conspired with the name Defendants (Defendants)**

**BEFORE:** CUMMING J.

**COUNSEL:** Christopher D. Bredt and Denise L. Bambrough, for the Plaintiffs

Brett Moldaver and Brendan Hughes, for the Defendants Ravindranauth  
Ramkissoon and Roseline Ramkissoon

**HEARD:** January 21, 2010

### **ENDORSEMENT**

#### **The Motion**

[1] The Plaintiffs bring a motion for an Order that the expert report of Nigel Jones dated November 23, 2009 (the “Expert Report”) be sealed by the Court and not form part of the public record. Court proceedings including the evidence put forth are presumptively entirely open to the public and the onus is upon the Plaintiffs to establish that they should be given the requested exceptional benefit of a sealing Order.

#### **Background**

[2] The Plaintiffs allege in these actions that the Defendants are involved in so-called satellite piracy, that is, their activities include the sale and distribution of Free-To-Air receivers (“FTA Receivers”), which have been designed to facilitate the theft of the Plaintiffs satellite programming, in breach of the *Radiocommunications Act*.

[3] Pursuant to *Anton Piller* Orders, the Defendants are enjoined from marketing, selling and distributing any device, technology or product used for the purpose of circumventing the Plaintiffs’ security systems, thereby permitting unauthorized access to the Plaintiffs’ encrypted satellite programming.

[4] The Plaintiffs' position is that the *Anton Piller* Orders enjoin the Digital Store Defendants from selling nFusion-brand FTA receivers. The Digital store Defendants have moved to set aside or vary the *Anton Piller* Orders to permit them to sell nFusion-brand FTA receivers.

[5] A main issue to be determined on the motion to vary is whether the nFusion-brand FTA receivers were designed for the purpose of satellite piracy. In response to evidence relied upon by the Digital Store Defendants with respect to this issue, the Plaintiffs have served the Jones Affidavit sworn November 24, 2009 and his attached Expert Report. Mr. Jones in his Expert Report concludes that these receivers were in fact designed for the purpose of piracy. Therefore, the Expert Report is relevant and important to the Plaintiffs' defence to the Defendants' motions to vary the *Anton Piller* Orders.

[6] The Court has the discretion to order that any document in a civil proceeding be treated as confidential and sealed, and that it not form part of the public record.

[7] As set forth in *Sierra Club of Canada v. Canada (Minister of Finance)*, [2002] 2 S.C.R. 522 (S.C.C.) at paras. 45 and 53 it is appropriate to grant a sealing order when:

- the order is necessary to prevent a serious risk to an important interest, including a commercial interest, in the context of litigation, because reasonably alternative measures will not prevent the risk; and
- the salutary effects of the order, including the effects on the right of civil litigants to a fair trial, outweigh its deleterious effects, including the effects on the right of free expression, which in this context includes the public interest in open and accessible court proceedings.

[8] The Jones' Expert Report describes certain technical specifications and design elements of the nFusion Nuvenio HD and nFusion HD FTA receivers which enable end-users of these receivers to descramble the Plaintiffs' encrypted satellite signals and circumvent technological measures that protect access to copyrighted works. As set forth in the affidavit (in particular at paras. 21 and 22) of Jerry Lee Gee, affiant for the Plaintiffs, if placed in the public domain, the level of technological detail provided in the Expert Report could be used as a 'blueprint' by manufacturers of nFusion FTA receivers to mask aspects of their design which now suggest that they were designed for use in satellite piracy. As well, if placed in the public domain, the level of technological detail provided in the Expert Report could be used by third parties to design other devices and software capable of infringing the Plaintiffs' trade secrets, descrambling their encrypted satellite signals, and circumventing technological measures that protect access to copyrighted and other proprietary works.

[9] There are not any reasonable alternatives available to the Plaintiffs to prevent the disclosure of the sensitive information in the context of this litigation. The relief sought is limited to those portions of the Expert Report (albeit being most of the Expert Report) which contain the sensitive information. The substance and nature of the litigation is available to the public through the affidavit and other evidence which has been served. A sealing Order will not significantly

impede public access to the court proceedings. The requested Order does not preclude the Defendants from providing the Expert Report to an independent expert of the Defendants who is retained to prepare a responding report, and who is made subject to the requisite confidentiality agreement.

[10] In my view, the Defendants do not raise any objection to the requested sealing Order that has merit.

**Disposition**

[11] In my view, and I so find, a sealing Order is necessary in order to prevent a serious risk to the Plaintiffs' commercial interests and, as well, the administration of justice. Disclosure of the sensitive information contained in the Expert Report might well cause serious prejudice and damages to the Plaintiffs' commercial interests. Moreover, if the Expert Report were to be placed in the public domain, it might well be of assistance to satellite pirates for unlawful and improper purposes, including the breach of provisions of the *Radiocommunications Act*.

[12] For the reasons given, a sealing Order is granted and will issue providing that the Jones' Expert Report be sealed and not form part of the public record, with a further copy of the Expert Report, in which sections 2, 5, 6 and 7 have been redacted, to be filed as part of the public record and providing further that the materials which have been filed in support of this motion remain sealed until a further Order of this Court.

“Peter A. Cumming J.”

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CUMMING J.

**Date:** February 2, 2010