

S-093469
No.
Vancouver Registry

In the Supreme Court of British Columbia

Vancouver Organizing Committee for the 2010
Olympic and Paralympic Winter Games,

Plaintiff

and

Roadtrips Inc., David Guenther, John Doe,
Jane Roe, and other persons unknown who have
conspired with the named Defendants,

Defendants

WRIT OF SUMMONS

Plaintiff: Vancouver Organizing Committee for the
2010 Olympic and Paralympic Winter
Games
c/o Borden Ladner Gervais LLP
1200 Waterfront Centre
200 Burrard Street
Vancouver, British Columbia
Canada, V7X 1T2

Defendants: Roadtrips Inc.
1700 – 360 Main Street, Winnipeg,
Manitoba, Canada
David Guenther
1700 – 360 Main Street, Winnipeg,
Manitoba, Canada

ELIZABETH THE SECOND, by the Grace of God, of the United Kingdom, Canada and Her
other Realms and Territories, Queen, Head of the Commonwealth, Defender of the Faith.

To the Defendants: Roadtrips Inc. and David Guenther and other persons unknown who
have conspired with the named Defendants

TAKE NOTICE that this action has been commenced against you by the
Plaintiff for the claims set out in this writ.

11 MAY 11 2009 9:14 AM
VAN01 2596258

IF YOU INTEND TO DEFEND this action, or if you have a set off or counterclaim that you wish to have taken into account at the trial, YOU MUST

- (a) GIVE NOTICE of your intention by filing a form entitled "Appearance" in the above registry of this court, at the address shown below, within the Time for Appearance provided for below and YOU MUST ALSO DELIVER a copy of the Appearance to the plaintiff's address for delivery, which is set out in this writ, and
- (b) if a statement of claim is provided with this writ of summons or is later served on or delivered to you, FILE a Statement of Defence in the above registry of this court within the Time for Defence provided for below and DELIVER a copy of the Statement of Defence to the plaintiff's address for delivery.

YOU OR YOUR SOLICITOR may file the Appearance and the Statement of Defence. You may obtain a form of Appearance at the registry.

JUDGMENT MAY BE TAKEN AGAINST YOU IF

- (a) YOU FAIL to file the Appearance within the Time for Appearance provided for below, or
- (b) YOU FAIL to file the Statement of Defence within the Time for Defence provided for below.

TIME FOR APPEARANCE

If this writ is served on a person in British Columbia, the time for appearance by that person is 7 days from the service (not including the day of service).

If this writ is served on a person outside British Columbia, the time for appearance by that person after service, is 21 days in the case of a person residing anywhere within Canada, 28 days in the case of a person residing in the United States of America, and 42 days in the case of a person residing elsewhere.

[or, if the time for appearance has been set by order of the court, within that time.]

TIME FOR DEFENCE

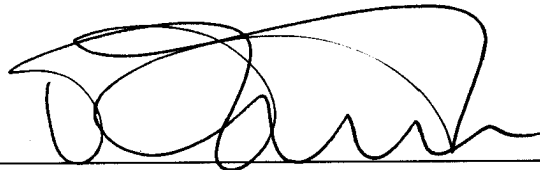
A Statement of Defence must be filed and delivered to the plaintiff within 14 days after the later of

- (a) the time that the Statement of Claim is served on you (whether with this writ of summons or otherwise) or is delivered to you in accordance with the Rules of Court, and
- (b) the end of the Time for Appearance provided for above.

[or, if the time for defence has been set by order of the court, within that time.]

<p>(1) The address of the registry is: 800 Smithe Street Vancouver, British Columbia V6Z 2E1</p>
<p>(2) The Plaintiff's ADDRESS FOR DELIVERY is: c/o Borden Ladner Gervais LLP 1200 Waterfront Centre 200 Burrard Street P.O. Box 48600 Vancouver, British Columbia V7X 1T2 Attention: Bradley J. Freedman</p> <p>Fax number for delivery: None</p>
<p>(3) The name and office address of the Plaintiff's solicitor is: Bradley J. Freedman Borden Ladner Gervais LLP 1200 Waterfront Centre 200 Burrard Street P.O. Box 48600 Vancouver, British Columbia V7X 1T2</p>

The Plaintiff's claims against the Defendants are set forth in the attached Statement of Claim.



DATED: 11 May 2009

Bradley J. Freedman
(BORDEN LADNER GERVAIS LLP)
Solicitor for the Plaintiff

**ENDORSEMENT ON ORIGINATING PROCESS FOR
SERVICE OUTSIDE BRITISH COLUMBIA**

The Plaintiff claims the right to serve this Writ of Summons on the Defendants outside British Columbia on the grounds that the proceeding: is brought to enforce, assert, declare, or determine proprietary or possessory rights in property in British Columbia that is movable property (section 10(a) of the *Court Jurisdiction and Proceedings Transfer Act*); concerns contractual obligations and by their express terms the contracts are governed by the law of British Columbia (section 10(e)(ii) of the *Court Jurisdiction and Proceedings Transfer Act*); concerns contractual obligations and the contract is for the purchase of services for use other than in the course of the purchaser's trade or profession (section 10(e)(iii) of the *Court Jurisdiction and Proceedings Transfer Act*); concerns a tort committed in British Columbia (section 10(g) of the *Court Jurisdiction and Proceedings Transfer Act*); concerns a business carried on in British Columbia (section 10(h) of the *Court Jurisdiction and Proceedings Transfer Act*); and includes a claim for injunctions ordering a party to do or refrain from doing anything in British Columbia and in relation to property in British Columbia that is moveable (section 10(i) of the *Court Jurisdiction and Proceedings Transfer Act*).

In the Supreme Court of British Columbia

Between

Vancouver Organizing Committee for the 2010
Olympic and Paralympic Winter Games,

Plaintiff

and

Roadtrips Inc., David Guenther, John Doe, Jane
Roe, and other persons unknown who have
conspired with the named Defendants,

Defendants

STATEMENT OF CLAIM

1. The Plaintiff has commenced this proceeding because the defendants Roadtrips Inc. and David Guenther have failed or refused to comply with the Plaintiff's repeated requests that they cease misleading consumers and scalping tickets for the 2010 Winter Games.

THE PARTIES

2. The Plaintiff, Vancouver Organizing Committee for the 2010 Olympic and Paralympic Winter Games ("VANOC"), is a corporation incorporated pursuant to the laws of Canada, with an office at 3585 Graveley Street, Vancouver, British Columbia.

3. VANOC is recognized by the Canadian Olympic Committee and the City of Vancouver as the organizing committee responsible for planning, organizing, financing and staging the XXI Olympic Winter Games and X Paralympic Games to be hosted by the City of Vancouver in February and March, 2010 (the "**2010 Winter Games**").

4. The defendant Roadtrips Inc. ("**Roadtrips**") is a corporation incorporated pursuant to the laws of the Province of Manitoba, with a registered office at 1700 – 360 Main Street, Winnipeg, Manitoba, Canada. Roadtrips carries on the business of marketing, promoting,

and selling hospitality packages (comprised of hotel accommodations, tickets and other services) for sporting events to consumers throughout the world, including in British Columbia.

5. The defendant David Guenther (“**Guenther**”) is a business person who resides in Winnipeg, Manitoba. Guenther is and was at all material times the President, Secretary, and sole Director of Roadtrips and the alter ego and directing mind of Roadtrips and, in addition to the other wrongful conduct of Guenther alleged herein, Guenther intentionally authorized, caused, directed, supervised, ordered, induced, produced, participated in, and aided and abetted the wrongful conduct of Roadtrips alleged herein, and as such is personally liable for that wrongful conduct and responsible in law for the actions of Roadtrips.

6. The defendants John Doe, Jane Roe and other persons unknown are parties to contracts with VANOC pursuant to which they have purchased or acquired tickets to events of the 2010 Winter Games.

THE TICKET AGREEMENTS

7. Pursuant to agreements with the International Olympic Committee, VANOC is responsible for selling and distributing tickets to events of the 2010 Winter Games (the “**Tickets**”) pursuant to the Olympic Ticketing Program, which is prescribed by the International Olympic Committee and is intended to ensure the fair, world-wide distribution of Tickets. To achieve those objectives, it is a fundamental requirement of the Olympic Ticketing Program that unauthorized reselling and promotional use of Tickets is strictly prohibited.

8. VANOC sells Tickets directly to persons located in Canada and other authorized purchasers, all of whom are required to agree to a *Ticket License Agreement*, which includes the following express or implied terms:

- (a) The Ticket License Agreement is binding on the original purchaser of the Tickets and all persons to whom the original purchaser transfers the Tickets or who otherwise wish to use the Tickets.
- (b) VANOC at all times is the sole and exclusive owner of all Tickets.
- (c) A Ticket must be produced for inspection by VANOC at any time upon request by VANOC.

- (d) VANOC and its authorized ticket resellers are the only authorized sellers of Tickets to Canadian residents.
- (e) Tickets in the possession of a person not authorized to possess the Tickets are subject to surrender to VANOC upon demand.
- (f) Tickets may not be resold or auctioned for monetary gain other than through VANOC's official Ticket Management and Secondary Market/Auction solution.
- (g) VANOC reserves the right to cancel Tickets obtained from unauthorized Ticket resellers or that are in the hands of unauthorized Ticket resellers, and to terminate the licenses granted by Tickets obtained from unauthorized Ticket resellers, all without any refund.
- (h) The unauthorized resale or attempted resale of a Ticket at a price higher than its face value is grounds for seizure or cancellation/invalidation of the Ticket by VANOC without refund or other compensation.
- (i) Tickets may not be used for advertising promotion or other trade purposes without VANOC's express written consent.
- (j) All disputes arising under, in connection with or incident to the Ticket License Agreement shall be litigated in and before a court of competent jurisdiction located in Vancouver, British Columbia, to the exclusion of the courts of any other city, province or country.

9. VANOC's authorized ticket resellers, Jet Set Sports and Tickets.com, are the only authorized resellers of Tickets to Canadian residents.

10. VANOC has authorized the National Olympic Committees of certain countries (each a “NOC”) to promote, sell and distribute Tickets to persons located in those countries directly and through authorized ticket distributors and sub-distributors pursuant to a *Ticket Sales Agreement*, which includes the following express or implied terms:

- (a) The NOC and its authorized Ticket distributors and sub-distributors (collectively, the “**Authorized Ticket Resellers**”) are prohibited from responding to requests for Tickets from residents outside a specified territory.
- (b) Authorized Ticket Resellers will comply with the International Olympic Committee Code of Conduct for the Sale of Tickets to the Olympic Games.
- (c) Authorized Ticket Resellers will sell Tickets only in the specified territory and only to persons in their designated purchaser group.
- (d) Authorized Ticket Resellers will not sell Tickets to purchasers for the purpose of resale of the Tickets or the promotion of any third party or any product or service.
- (e) The NOC is jointly and severally liable to VANOC for the compliance by its authorized Ticket distributors and sub-distributors with the requirements of the Ticket Sales Agreement and the International Olympic Committee Code of Conduct for the Sale of Tickets to the Olympic Games.
- (f) Upon request by VANOC, Authorized Ticket Resellers will provide VANOC with the names and addresses of all ticket purchasers with details of their orders and other information reasonably requested by VANOC.
- (g) Authorized Ticket Resellers will provide all necessary assistance to VANOC to prevent unauthorized promotion or sale of Tickets, and will promptly notify VANOC of any circumstances relating to the unauthorized promotion or sale of Tickets.
- (h) Authorized Ticket Resellers will notify each Ticket purchaser that they are prohibited from reselling Tickets or using Tickets to promote any personal product or service.

- (i) Authorized Ticket Resellers will not sell Tickets to any person that they have reason to believe will resell the Tickets or use them for promotional or other commercial purposes.
- (j) Authorized Ticket Resellers will ensure that all Ticket purchasers acknowledge and agree to the *Ticket License Agreement*.
- (k) VANOC may terminate the Ticket Sales Agreement if an Authorized Ticket Reseller: (i) sells Tickets to purchasers who are not resident in the specified territory; (ii) sells Tickets to any person whom the Authorized Ticket Reseller knows or has reason to know operates in a secondary market to resell Tickets; (iii) materially breaches the International Olympic Committee Code of Conduct for the Sale of Tickets to the Olympic Games; or (iv) does not refrain from selling Tickets it knows will pass through the hands of scalpers or brokers.
- (l) The Ticket Sales Agreement is governed by the laws of the Province of British Columbia and the laws of Canada applicable therein.

11. The International Olympic Committee Code of Conduct for the Sale of Tickets to the Olympic Games expressly provides, among other things, that NOCs and their authorized Ticket distributors and sub-distributors will sell and distribute Tickets in a transparent, open and fair manner, and will avoid and prevent unauthorized resale of Tickets.

12. The purchase, possession and use of each Ticket is subject to terms and conditions printed on the Ticket (the “**Ticket Terms**”), which include the following express provisions:

- (a) The Ticket Terms are binding on all persons who purchase, possess, or attempt to use the Ticket.
- (b) The Ticket is subject to immediate cancellation by VANOC, without any refund or other compensation, if it is purchased or acquired, or sold or used, in breach of the *Ticket License Agreement* or the Ticket Terms.
- (c) The Ticket is and will at all times remain the exclusive property of VANOC and must be produced for inspection at any time at VANOC’s request.

- (d) The resale or attempted resale of the Ticket at a price greater than that printed thereon, without VANOC's express prior written consent, is strictly prohibited.
- (e) The Ticket may not be resold, delivered or transferred to any person who intends to resell, or facilitate the resale of, the Ticket or use the Ticket in breach of the *Ticket License Agreement* or the Ticket Terms.
- (f) All sales or transfers of the Ticket must be effected through VANOC's Ticket Exchange Program (at www.vancouver2010.com).
- (g) The Ticket may not be used for any political, commercial, advertising or other promotional purposes (including contests and sweepstakes) without VANOC's express prior written consent.
- (h) The Ticket Terms are governed by the laws of the Province of British Columbia.

13. The terms of each of the *Ticket License Agreement*, *Ticket Sales Agreement* and the Ticket Terms are known to the Defendants, and will be relied upon at the trial of this action for their full and precise meaning and effect.

THE DEFENDANTS' MISCONDUCT

14. Roadtrips and Guenther are not authorized by VANOC, the Canadian Olympic Committee, or the International Olympic Committee to resell Tickets (alone or as part of hospitality packages).

15. Commencing at least as early as 2008, Roadtrips began marketing, promoting, offering for sale and selling Tickets (alone and as part of hospitality packages) to consumers around the world, including individuals located in British Columbia and elsewhere in Canada, including through the website at www.roadtrips.com.

16. The fees charged by Roadtrips for Tickets (alone and as part of hospitality packages) grossly exceed the face value of the Tickets.

17. Further and alternatively, each of Roadtrips, Guenther and other unknown Defendants have purchased or agreed to purchase Tickets for the purpose of reselling or using those Tickets (directly or through Roadtrips).

18. At all material times, each of the Defendants knew or ought to have known as follows:

- (a) the resale of Tickets to Roadtrips is expressly prohibited by, and is a breach of, the *Ticket License Agreement*, the *Ticket Sales Agreement*, and the Ticket Terms;
- (b) the purchase and resale of Tickets by Roadtrips and Guenther is expressly prohibited by, and is a breach of, the *Ticket License Agreement*, the *Ticket Sales Agreement*, and the Ticket Terms;
- (c) VANOC is entitled to cancel, invalidate and seize all Tickets held by Roadtrips and its customers; and
- (d) there is a real and substantial risk that Roadtrips will not be able to deliver Tickets to its customers, and that any such Tickets presented by Roadtrips' customers at 2010 Winter Games Events will be cancelled, invalidated and seized by VANOC.

19. Further and alternatively, in its marketing and promotion of Tickets (alone and as part of hospitality packages), Roadtrips has represented to consumers, and continues to represent to consumers, that it is able to provide them with "guaranteed" Tickets; and each of Roadtrips and Guenther intended and knew, or ought to have known, that consumers would rely upon that representation and would be induced by that representation to purchase Tickets (alone and as part of hospitality packages) from Roadtrips.

20. Further and alternatively, in support of Roadtrips' marketing and promotion of Tickets (alone and as part of hospitality packages), Guenther has personally endorsed Roadtrips and its services and has personally represented to consumers, and continues to personally represent to consumers, that Roadtrips is able to provide the "ultimate sporting experience" in connection with the 2010 Winter Games, and at all material times each of Roadtrips and Guenther intended and knew, or ought to have known, that consumers would rely upon

Guenther's endorsement and representations and would be induced by them to purchase Tickets (alone and as part of hospitality packages) from Roadtrips.

21. Further and alternatively, by purchasing or acquiring Tickets or making arrangements to do so, each of Roadtrips and Guenther has knowingly and intentionally induced the defendants John Doe, Jane Roe and other persons unknown, each of whom are or will be parties to one or more of the *Ticket License Agreement*, the *Ticket Sales Agreement*, or the Ticket Terms, to fundamentally breach those contracts, and has knowingly and intentionally aided, assisted, participated in, and benefited from those breaches of contract.

22. Further and alternatively, by purchasing or taking possession of Tickets, Roadtrips and Guenther agreed to be bound by the *Ticket License Agreement* and the Ticket Terms, and any subsequent resale or promotional use of the Tickets (alone or as part of hospitality packages) by Roadtrips or Guenther is a fundamental breach of the *Ticket License Agreement* and the Ticket Terms by Roadtrips or Guenther.

23. Further and alternatively, by the wrongful conduct set forth herein, each of Roadtrips and Guenther have engaged in materially false, deceptive and misleading advertising, acts and practices, and have made materially false, deceptive and misleading representations to the public in British Columbia and elsewhere in connection with and for the purpose of promoting their business interests, including by expressly or implicitly representing that they are lawfully entitled to sell Tickets and that they are able to source and provide "guaranteed" and valid Tickets, in breach of the *Competition Act*, R.S.C. 1985, c. C-34, s. 52, and the *Business Practices and Consumer Protection Act*, S.B.C. 2004, c. 2, and they will continue to do so.

24. Further and alternatively, beginning at a time unknown to VANOC, each of the Defendants combined and conspired with each other and with other persons unknown by unlawful means (particulars of which are set forth herein, including the unauthorized purchase, resale and use of Tickets and breaches of some or all of the *Ticket License Agreement*, the *Ticket Sales Agreement*, and the Ticket Terms) to obtain an unlawful benefit – namely the profit resulting from the unauthorized resale of Tickets (alone and as part of hospitality packages). In furtherance of the conspiracy, the Defendants and each of them engaged in the wrongful acts set forth herein. The Defendants and each of them intended and knew, or ought to have known, that their wrongful acts would cause injury to VANOC and to the goodwill and reputation of the

2010 Winter Games and the Olympic Movement. As a result of the Defendants' wrongful acts in furtherance of the conspiracy, VANOC has suffered and will continue to suffer loss, damage, and expense, and the goodwill and reputation of the 2010 Winter Games and the Olympic Movement have been, and will continue to be, tarnished.

25. Further and alternatively, by virtue of the wrongful conduct set forth herein, the Defendants and each of them have unlawfully interfered with VANOC's economic interests, contractual and business relations, and expectations of further business relationships, with knowledge of those relationships and expectancies, and with the intention of injuring VANOC.

26. Further and alternatively, by reason of the Defendants' wrongful conduct alleged herein, the Defendants have made and will continue to make a profit and VANOC has suffered and will continue to suffer loss, damage and expense, including without limitation irreparable loss and damage to its reputation and goodwill, and impairment of its ability to fulfill its obligations to the International Olympic Committee.

27. Further and alternatively, by reason of the wrongful conduct set forth herein, the Defendants and each of them have been unjustly enriched and VANOC has suffered a corresponding deprivation, all without any juridical reason.

28. Further and alternatively, as a result of the Defendants' wrongful conduct set forth herein, VANOC has suffered and will continue to suffer loss, damage, and expense, including irreparable loss and damage to its reputation and goodwill; and it was or ought to have been reasonably foreseeable to each of the Defendants that their wrongful conduct set forth herein would cause such damage, loss and expense to VANOC.

29. Commencing in or about March 2008, VANOC repeatedly requested that Roadtrips and Guenther cease their wrongful conduct as alleged herein. Despite VANOC's repeated requests, each of Roadtrips and Guenther have failed or refused to cease their wrongful conduct.

30. Further and alternatively, unless the Defendants are restrained by this Honourable Court from engaging in the wrongful conduct alleged herein, the Defendants will continue to engage in the wrongful conduct and VANOC will continue to suffer damage, loss and expense.

31. VANOC pleads and relies upon the *Competition Act*, R.S.C. 1985, c. C-34, s. 52; the *Business Practices and Consumer Protection Act*, S.B.C. 2004, c. 2, and section 36 of the *Law and Equity Act*, R.S.B.C. 1996, c. 253, each as amended.

RELIEF SOUGHT

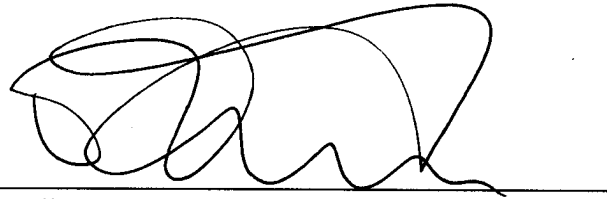
The Plaintiff claims as against the Defendants and each of them as follows:

- (a) declarations that Roadtrips and Guenther have engaged in prohibited acts and practices contrary to the *Competition Act*, R.S.C. 1985, c. C-34, s. 52, and the *Business Practices and Consumer Protection Act*, S.B.C. 2004, c. 2;
- (b) further and alternatively, interim, interlocutory, and permanent injunctions prohibiting and restraining John Doe and Jane Roe from directly or indirectly selling or transferring, or agreeing to sell or transfer, any Tickets to the Defendants or other person without the prior written consent of VANOC;
- (c) further and alternatively, interim, interlocutory, and permanent injunctions prohibiting and restraining each of Roadtrips and Guenther, by themselves or their respective directors, officers, employees, agents, or otherwise (as applicable), from directly or indirectly purchasing or offering to purchase, or marketing, promoting, offering to sell, or selling, any Tickets (alone or as part of hospitality packages);
- (d) further and alternatively, orders requiring the Defendants, and each of them, to forthwith deliver up to VANOC all Tickets in their possession, power or control;
- (e) further and alternatively, orders requiring the Defendants, and each of them, to forthwith disclose to VANOC the names and contact details of: (i) all persons from whom they have directly or indirectly purchased or acquired, or agreed to purchase or acquire, Tickets; and (ii) all persons to whom they have directly or indirectly sold or transferred, or agreed to sell or transfer, Tickets (alone or as part of hospitality packages);
- (f) general, special, exemplary and punitive damages;

- (g) further and alternatively, as VANOC may elect, an accounting of the Defendants' profits as a result of their wrongful conduct, and judgment for the amount found due on the taking of that accounting;
- (h) interest pursuant to the *Court Order Interest Act*, R.S.B.C. 1996, c.79;
- (i) costs, including special costs; and
- (j) such further and other relief as this Honourable Court may consider just.

Place of trial: Vancouver, British Columbia.

DATED: 11 May 2009.



Bradley J. Freedman
(BORDEN LADNER GERVAIS LLP)
Solicitor for the Plaintiff