



No. S093469
Vancouver Registry

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

AND

JET SET SPORTS CANADA INC. AND
TICKETS.COM CANADA LIMITED

15JUN09 919108 RDSO
21422 S093469

208.00

Defendants by Counterclaim

**STATEMENT OF DEFENCE AND COUNTERCLAIM
OF THE DEFENDANTS ROADTRIPS INC. AND DAVID GUENTHER**

1. Unless expressly admitted in this Statement of Defence, the Defendants Roadtrips Inc. ("Roadtrips") and David Guenther ("Guenther") (collectively, the "Defendants") deny each and every allegation in the Statement of Claim, and put the Plaintiff to the strict proof thereof.
2. The Defendants admit only the allegations contained in paragraph 2 of the Statement of Claim.
3. The Defendants deny the allegations contained in paragraphs 1, 4, 5, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, and 31 of the Statement of Claim, and the Defendants deny that the Plaintiff is entitled to any of the relief sought therein.
4. The Defendants have no knowledge in respect of the allegations contained in

paragraphs 3, 6, 7, 8, 9, 10, and 11 of the Statement of Claim, and put the Plaintiff to the strict proof thereof.

5. In further reply to paragraph 4 of the Statement of Claim, the Defendants admit only that Roadtrips is a corporation pursuant to the laws of Manitoba, where it maintains its registered office at 1700 – 360 Main Street, Winnipeg, Manitoba, R3C 3Z3. Roadtrips is a travel agent and tour packager offering predominantly sports-related tour packages comprised of accommodations, tickets, and other services to its customers.
6. In further reply to paragraph 5 of the Statement of Claim, the Defendants admit only that Guenther resides in Winnipeg, Manitoba, and is the President, Secretary, and sole director of Roadtrips. The Defendants deny the balance of the allegations contained in paragraph 5 of the Statement of Claim, and any allegation in the Statement of Claim as a whole of any wrongful conduct on the part of Guenther or that Guenther is personally liable in law for any of the actions of Roadtrips complained of by the Plaintiff in this Action. Nowhere does the Statement of Claim contain any allegations of fact that would attract personal liability on the part of Guenther. At no time has Guenther acted in any manner other than in the ordinary course of carrying on his duties as President, Secretary, and director of Roadtrips.
7. In further reply to the whole Statement of Claim, the Defendants say:
 - (a) Roadtrips has been in the travel business for approximately 17 years, in the course of which it has built significant goodwill and a reputation of excellence in the industry;
 - (b) Roadtrips has been designated as the preferred supplier of tour packages by numerous companies and travel consortia throughout Canada and internationally;

- (c) In or about February 2008, Roadtrips commenced offering tour packages to Vancouver for customers desiring to attend in Vancouver for the 2010 Winter Games;
- (d) Included in Roadtrips' tour packages for the 2010 Winter Games has been the offer to provide tickets to certain sporting and other events;
- (e) Roadtrips is not a ticket broker and does not market, promote, or sell tickets to the 2010 Winter Games to customers other than as part of a larger tour package. Although Roadtrips considered selling tickets alone and investigated means of doing so, it has never sold tickets alone to the 2010 Winter Games;
- (f) At no time has Roadtrips solicited or acquired any tickets to the 2010 Winter Games from any Authorized Ticket Reseller ("ATR") as defined in the Statement of Claim. Any tickets offered by Roadtrips for inclusion in a tour package for the 2010 Winter Games have been sourced from a third party ticket broker who offered those tickets to Roadtrips as a means of soliciting business from Roadtrips;
- (g) At no time has Roadtrips, directly or indirectly, entered into any agreement, written or otherwise, with, or received consideration from, the Plaintiff Vancouver Organizing Committee for the 2010 Olympic and Paralympic Winter Games ("VANOC"), or any agent thereof, nor has VANOC or any agent thereof given any consideration to any person to bind the Defendants in contract with VANOC;
- (h) The express terms and conditions of each tour package sold by Roadtrips to its customers include, among other things:
 - (i) Roadtrips is acting solely as a travel agent and tour packager;

- (ii) Roadtrips is responsible for making the arrangements for accommodations, services, and event tickets except to the extent that those accommodations, services, or event tickets cannot be supplied or become no longer available for reasons beyond Roadtrips' control;
- (iii) Roadtrips shall not be liable for any loss or damage, direct or indirect, arising out of any act, omission, or negligence of any air carrier, motor coach company, hotel, or any other person rendering any service or providing any accommodation or event in conjunction with the tour package;
- (iv) Roadtrips shall not be liable for any loss or damage, direct or indirect, sustained as a result of any reason beyond Roadtrips' control;
- (v) Roadtrips is not and does not hold itself out to be an official ticket box office for the events in any tour package;
- (vi) Roadtrips' customers acknowledge that Roadtrips accesses tickets from a variety of sources that may or may not include an official ticket sales channel or secondary ticket market sources, and the customers expressly agree to permit Roadtrips to use its best judgment and experience regarding all available ticket sources so as to be able to provide any tickets included in the tour package;
- (vii) In the event that Roadtrips is not able to provide tickets ordered, or reasonably comparable alternatives, Roadtrips will reimburse its customers;
- (viii) Roadtrips is not affiliated with any sports team, league, association, or organization, unless otherwise stated; and

- (ix) Roadtrips is in no way associated with the International Olympic Committee, Canadian Olympic Committee or VANOC; and
 - (i) The terms and conditions are displayed prominently on Roadtrips' web site and other material provided to Roadtrips' customers.
- 8. In further reply to the allegations contained in paragraph 7 of the Statement of Claim, the Defendants have no knowledge of the alleged agreements referred to therein between VANOC and the International Olympic Committee, or any terms or objectives thereof, and at no time has Roadtrips become a party thereto or otherwise agreed to be bound by any such agreements.
- 9. In further reply to the allegations contained in paragraphs 8, 9, 10, 13, 21, and 22 of the Statement of Claim, the Defendants have no knowledge of, and are not parties to, nor have the Defendants agreed to be bound by any alleged *Ticket License Agreement*, *Ticket Sales Agreement*, or Ticket Terms (as these terms are used in the Statement of Claim) between VANOC any person located in Canada or other authorized purchaser, including Jet Set Sports Canada Inc. ("Jet Set") and Tickets.com Canada Limited ("Tickets.com"). No consideration has been given by VANOC, or any NOC or ATR (as defined in the Statement of Claim) or any agent therefor, to bind the Defendants in respect to any *Ticket License Agreement*, *Ticket Sales Agreement*, Ticket Terms, or any other agreement.
- 10. In further reply to the allegations contained in paragraphs 11 and 13 of the Statement of Claim, the Defendants have no knowledge of and are not parties to the alleged International Committee Code of Conduct for the sale of tickets to the Olympic Games and have not otherwise agreed to be bound by any such code. The Defendants repeat that at no time has Roadtrips purchased any tickets for the 2010 Winter Games from any NOC or ATR as defined in the Statement of Claim.
- 11. In further reply to the allegations contained in paragraphs 12 and 13 of the Statement of Claim, the Defendants say that, as of the date hereof, no tickets to

the 2010 Winter Games have been printed or distributed and, in the circumstances, the Defendants have no knowledge of, are not, and cannot be parties to any Ticket Terms, as alleged or at all. At no time has Roadtrips agreed to be bound by any such Ticket Terms.

12. In further reply to the allegations contained in paragraphs 14 through 16 of the Statement of Claim, the Defendants deny that Roadtrips markets, promotes, or offers for sale (or is selling) tickets alone, to consumers. The Plaintiff knows that any 2010 Winter Games tickets to be provided to Roadtrips' customers shall form part of a tour package. The Defendants repeat the allegations contained in subparagraphs 7(e and f) hereof.
13. In further reply to the allegations contained in paragraphs 14 through 16 and the whole of the Statement of Claim, the Defendants say that VANOC's repeated public assertions in the media and elsewhere that Roadtrips is a ticket seller or is scalping tickets is, to the knowledge of VANOC, false, misleading, and defamatory, and done solely to discredit Roadtrips in the market place. VANOC's false, misleading, and defamatory assertions have caused and will continue to cause damage to Roadtrips' reputation and business as further described in paragraph 24 hereof.
14. In further reply to the allegations contained in paragraph 17 of the Statement of Claim, the Defendants have no knowledge of any conduct on the part of alleged "unknown Defendants", and put VANOC to the strict proof thereof.
15. In further reply to the allegations contained in paragraphs 8, 10, 11, 12, and 13, and in reply to subparagraphs 18 (a) through (c) and the whole of the Statement of Claim, the Defendants deny that Roadtrips knew or ought to have known of the terms of the alleged *Ticket License Agreement*, the alleged *Ticket Sales Agreement*, and the alleged Ticket Terms.
16. In further reply to the allegations contained in subparagraph 18(d) of the

Statement of Claim, the Defendants have no knowledge of any real and substantial risk that Roadtrips will not be able to deliver tickets to its customers or of any real intention or legal right on the part of VANOC to cancel, invalidate, or seize the tickets and denies these allegations. Further, there is no real or effective means of carrying out such a threat. The Defendants say further that VANOC's threat to cancel, invalidate, and seize tickets, lawfully obtained and included in tour packages, is part of a calculated and willful effort by VANOC on its own and in combination with Jet Set and Tickets.com to unlawfully intimidate Roadtrips and its customers, interfere with Roadtrips contractual relations with its customers, and damage Roadtrips' reputation and economic interests.

17. In further reply to paragraph 19 of the Statement of Claim, to the knowledge of VANOC, since at least December 2008, Roadtrips' representations to its customers and the public have been as set out in the terms and conditions referred to in paragraph 7 above. To the extent that the word "guarantee" was utilized at any time prior to December 2008, it was not in the context or sense alleged by VANOC, was not misleading, and, at all times, the terms and conditions, including limitations in respect to tickets sourced by Roadtrips, were clearly disclosed, true, and accurate.
18. In further reply to the allegations contained in paragraph 20 of the Statement of Claim, the Defendants admit only that in connection with Roadtrips' business, Roadtrips advertised its tour packages to the 2010 Winter Games as well as other sporting events. At all times, Roadtrips' promotional material promoted the excellent service and experiences that demonstrate Roadtrips' past services and business practices as provided to its customers. At no time has Guenther acted in any manner other than in the ordinary course of carrying out his duties as President, Secretary, and director of Roadtrips.
19. In further reply to paragraphs 19 and 20 of the Statement of Claim, the Defendants state that VANOC knows or should have known that Roadtrips does not market or promote tickets to the 2010 Winter Games other than as part of a

larger tour package. VANOC's repeated public assertions that Roadtrips is a ticket broker or "scalper" are blatantly false, malicious, and defamatory, and are made to defame and cause damage to Roadtrips and its business, all as further described in paragraph 24 hereof.

20. In further reply to the allegations contained in paragraph 21 of the Statement of Claim, the Defendants repeat that at no time has Roadtrips ever purchased or acquired tickets for the 2010 Winter Games from any parties who are or will be parties to any *Ticket License Agreement*, *Ticket Sales Agreement*, or Ticket Terms as defined in the Statement of Claim, or from any NOC or ATR as defined in the Statement of Claim, or that the Defendants have ever knowingly, intentionally, or otherwise induced any person to breach, fundamentally or otherwise, any contract, or that the Defendants have knowingly, intentionally, or otherwise aided, assisted, participated, or benefited from any such alleged breach.
21. In further reply to the allegations contained in paragraph 23 of the Statement of Claim, the Defendants deny that they have engaged in any wrongful conduct including any false or deceptive or misleading advertising or representation to the public in British Columbia or elsewhere, for the purpose of promoting their business interests. The Defendants repeat the allegations contained in paragraphs 7(h) and 7(i) hereof. The Defendants deny that they are or will be in breach of the *Competition Act*, R.S.C. 1985, c. C-34 and/or the *Business Practices and Consumer Protection Act*, S.B.C. 2004, c. 2.
22. In further reply to the allegations contained in paragraph 24 of the Statement of Claim, the Defendants deny that they combined and conspired with any other person, by unlawful or other means, to obtain any unlawful benefit. The Defendants further deny that they intended and knew or ought to have known that any act would cause injury to VANOC or to the goodwill and reputation of the 2010 Winter Games or Olympic Movement. The defendants deny that they have committed any act that has or will cause injury to VANOC or to the goodwill and reputation of the 2010 Winter Games or Olympic Movement.

23. In further reply to the allegations contained in paragraph 29 of the Statement of Claim, and in further reply to the whole of the Statement of Claim, the Defendants admit only that in or about March 2008, communications occurred between Roadtrips and VANOC, as a result of which Roadtrips voluntarily removed from its promotional material certain marks alleged by VANOC to be protected by VANOC, but would not concede that the inclusion of tickets in tour packages was unlawful. Notwithstanding VANOC's knowledge of Roadtrips' position, at no time prior to May 11, 2009, about 14 months later, did VANOC initiate any formal legal action. Roadtrips says that as a result of the 14-month delay VANOC, is estopped from enjoining or otherwise restricting the inclusion by Roadtrips of 2010 Winter Games tickets in its tour packages.
24. In further reply to paragraphs 14, 15, 16, 19, and 20, and the whole of the Statement of Claim, the Defendants say that VANOC has engaged in intentional, malicious, and unlawful conduct calculated to cause, and which has, in fact, caused, loss and damage to Roadtrips. Particulars of this conduct include:
- (a) making public false, misleading, and defamatory statements and innuendo intended to diminish Roadtrips' reputation in the eyes of the public. In particular, in statements to the media and the public at large, VANOC and/or its authorized representatives,
 - (i) have described and continue to describe Roadtrips as a ticket broker or "scalper" engaged in illegal and unlawful activity;
 - (ii) have represented and continue to represent that Roadtrips is misleading its customers in the sale of tour packages;

The plain and ordinary meaning of VANOC's statements, and/or the reasonable inference therefrom is, among other things, that Roadtrips is in the ticket scalping business, that it is in violation of the laws of Canada, that it cannot fulfill its obligations as agreed between it and its customers,

and that it ought not to be trusted.

- (b) for the purpose of promoting the supply of tickets to the 2010 Winter Games, knowingly and recklessly making representations to the public that are false and misleading in breach of ss. 36 and 52 of the *Competition Act*;
- (c) concerted efforts to restrain and injure competition, including in the market of tour package providers, and intentionally, willfully, unfairly and maliciously targeting Roadtrips to the exclusion of a multitude of well-known ticket brokers who are directly engaged in the resale of tickets to 2010 Winter Games.

25. In reply to the whole of the Statement of Claim, the Defendants say that VANOC and Jet Set have conspired, combined, and agreed to restrain or injure competition with the intention of injuring Roadtrips and other tour packagers. More particularly:

- (a) Jet Set and Roadtrips are direct competitors in the field of selling tour packages;
- (b) the sporting event ticket component constitutes an important component of the tour packages sold by each Roadtrips and Jet Set as access to such sporting events constitutes a material reason that Jet Set's and Roadtrips' customers contract with them;
- (c) on dates known only to VANOC and Jet Set, VANOC and Jet Set entered into one or more agreements whereby VANOC granted to Jet Set the exclusive right to receive Olympic event tickets from VANOC for inclusion in tour packages sold by Jet Set to its customers;
- (d) said agreements were calculated to and have had the effect of unduly

restricting and injuring the ability of Roadtrips and other market participants to compete with Jet Set in the sale of tour packages to the 2010 Winter Games and therefore violate ss. 36 and 45 of the *Competition Act*.

26. In reply to the whole of the Statement of Claim, the Defendants say that VANOC and Tickets.com have conspired, combined, and agreed to restrain or injure competition. More particularly:
 - (a) Tickets.com has contracted with VANOC to provide the ticket management system for the ordering and processing of tickets for the 2010 Winter Games;
 - (b) Tickets.com and VANOC have, or will in the immediate future, enter into one or more agreements whereby VANOC purports to grant to Tickets.com the exclusive right to create, manage, operate, and profit from a secondary market respecting 2010 Winter Games tickets;
 - (c) said agreements have, or will have, the effect of unduly restricting and injuring the existing and long-established secondary market participants from competing in the sale or resale of 2010 Winter Games tickets and violate ss. 36 and 45 of the *Competition Act*.
27. Further and alternatively, the Defendants say that VANOC and Jet Set have engaged in the unlawful conduct referenced in paragraphs 24 and 25 hereof with the express purpose of causing injury to Roadtrips.
28. Further and alternatively, the Defendants say that VANOC and Jet Set have combined and conspired with each other with the predominant and unlawful purpose of injuring Roadtrips.
29. Further and alternatively, by virtue of the unlawful conduct described in

paragraphs 24 and 25 hereof, VANOC and Jet Set, and each of them, have knowingly and willfully interfered with Roadtrips' economic interests, contractual, and business relations with its customers and expectations of further business relationships, with knowledge of those relationships and expectancies, and with the intention of injuring Roadtrips.

30. Further and alternatively, by virtue of the conduct described in paragraphs 24, 25, and 26 hereof, VANOC, Jet Set, Tickets.com and each of them have been or will be unjustly enriched and the Defendants have suffered a corresponding deprivation without any juristic reason.
31. Further and alternatively, the Defendants say that these proceedings have been commenced for a collateral and improper purpose and as such amount to an abuse of the Court's process. VANOC seeks to obtain, through this litigation, and to the detriment of Roadtrips, discovery as to the members of its own Olympic Family who allegedly have failed to honour specific terms and conditions of alleged various agreements and arrangements entered into between VANOC and said Olympic Family Members. In particular, VANOC's counsel, by letter dated June 2, 2009, has advised of their intention to serve interrogatories requiring the Defendants to identify by name and address all persons from whom they have purchased or acquired tickets to the 2010 Winter Games, or made arrangements to do so.
32. In further reply to the whole Statement of Claim, if the Defendants are liable to the Plaintiff for any amount, which is denied, the Defendants are entitled to set off against such debt any amount they are awarded by way of counterclaim.

Wherefore the Defendants submit that VANOC's Action should be dismissed with special costs to the Defendants.



COUNTERCLAIM

33. The Defendant by Counterclaim Jet Set is a federal corporation incorporated under the laws of Canada and registered as an extraprovincial company under the laws of British Columbia. Jet Set has its head office at 179 John Street, Suite 401, Toronto, Ontario, Canada, and an attorney SE Corporate Services Ltd. within British Columbia at Suite 1700 - Park Place, 666 Burrard Street, Vancouver, British Columbia, V6C 2X8.
34. The Defendant by Counterclaim Tickets.com is an Ontario corporation incorporated under the laws of Ontario and registered as an extraprovincial company under the laws of British Columbia. Tickets.com has its head office at 40 King Street West, Suite 2100, Toronto, Ontario M5H 3C2, Canada, and an attorney Lawdell Corporate Services Limited within British Columbia at 1600 - 925 West Georgia Street, Vancouver, British Columbia, V6C 3L2.
35. The Defendants repeat all the allegations in their Statement of Defence including those in paragraphs 7, 13, 16, 19, and 24 to 31 of the Statement of Defence.

The Defendants claim as against the Plaintiff and Defendants by Counterclaim, and each of them:

- (a) a declaration that VANOC has knowingly and recklessly made representations to the public that are false and misleading in breach of ss. 36 and 52 of the *Competition Act*;
- (b) a declaration that VANOC and Jet Set have entered into agreements calculated to, and having the effect of, unduly restricting and injuring the ability of Roadtrips and other market participants to compete with Jet Set in the sale of tour packages to the 2010 Winter Games, contrary to ss. 36 and 45 of the *Competition Act*;

- (c) a declaration that VANOC and Tickets.com have conspired, combined, and agreed to restrain or injure competition contrary to ss. 36 and 45 of the *Competition Act*;
- (d) interlocutory and permanent injunctions restraining each of VANOC and Jet Set, by their directors, officers, servants, workmen, agents, employees, and otherwise, from:
 - (i) publishing statements or otherwise representing Roadtrips to be a ticket scalper or broker;
 - (ii) publishing statements or otherwise representing that Roadtrips is engaged in illegal or unlawful conduct;
 - (iii) publishing statements or otherwise representing that Roadtrips is misleading its customers;
 - (iv) misrepresenting the express terms and conditions upon which Roadtrips sells its tour packages to its customers;
 - (v) threatening to cancel, invalidate, or seize tickets offered as part of Roadtrips tour packages for the 2010 Winter Games; or
 - (vi) embarking on any other conduct intended to damage Roadtrip's reputation or economic interest;
- (e) general and special damages;
- (f) aggravated damages;
- (g) punitive and exemplary damages;
- (h) disgorgement of unjust enrichment to VANOC, Jet Set, and Tickets.com

and restitution of the unjust enrichment to Roadtrips;

- (i) special costs of this Counterclaim;
- (j) pre-judgment and post-judgment interest on such damages and unjust enrichment, from the date such damages and unjust enrichment arose until the date of payment, and post-judgment interest on costs; and
- (k) such further and other relief as to this Honourable Court may seem just.

June 15, 2009

Dated



for

Smart & Biggar
Box 11560 Vancouver Centre,
2200 – 650 West Georgia Street
Vancouver BC, V6B 4N8

As agents for:

Fillmore Riley LLP
1700 Commodity Exchange Tower
360 Main Street
Winnipeg, Manitoba
R3C 3Z3
Solicitors for the Defendants
Roadtrips Inc. and David Guenther