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Part 1 of this newsletter is prepared by Professors Robert Currie, Chidi Oguamanam and Stephen Coughlan of the Law and Technology Institute of Dalhousie Law School. Part 2 of this newsletter is prepared by Professors Pierre Trudel and France Abran of the L.R. Wilson Chair in Information Technology and Electronic Commerce Law, Université de Montréal.

Les auteurs de la première partie du présent bulletin sont les professeurs Robert Currie, Chidi Oguamanam et Stephen Coughlan de l'Institut de droit et de technologie de la Faculté de droit de l'Université de Dalhousie. Les professeurs Pierre Trudel et France Abran de le Chaire en droit des technologies de l'information et du commerce électronique L.R. Wilson de la Faculté de droit de l'Université de Montréal ont rédigé la seconde partie du présent bulletin.

Part 1

Competition Bureau on Generic Drugs and Canadians

The Competition Bureau has released a report titled *Canadian Generic Drug Sector Study*. This 65-page study which was conducted by the Bureau pursuant to its mandate as competition advocate was motivated in part by concerns over the high price of prescription drugs in Canada in comparison with other OECD countries. Also, the report comes on the backdrop of the increasing importance of pharmaceuticals to Canada's health care delivery. The Bureau notes that in 2005, 43% of all drugs dispensed in Canadian retail pharmacies were generic while in 2006, the dollar amount of generic drug spending was 3.2 billion, a trend that is expected to rise. According to the Report, competition plays a limited role in Canada's health care system and there is an increased need for health-related competition advocacy. The report found that in the past 15 years generic drug manufacturing has increased in competitive status. However, in the majority of Canadian provinces generic drug manufacturers compete to have their products stocked by pharmacies and as part of their strategy, they offer rebates off invoice prices. These rebates constitute incentives for pharmacies and influence their choice of which generic drugs to stock. Rebates constitute on average 40% of the price the pharmacy is invoiced. Only Ontario and Quebec currently prohibit rebates of this sort in Canada, but in Ontario and possibly in Quebec generic drug makers are allowed or may be allowed to compete by paying for the professional services of pharmacy professionals which includes patient counseling. Unfortunately, according to the report, rebates and allowances are not reflected in the amounts which the general public in Canada pays for drugs either through the private drug plans or out-of-pocket alternatives. As distinct from other provinces, since 2006 Ontario reduced the price it could pay for generic drugs to 50% of their brand name equivalent. However, this does not apply to private drug plans in Ontario which according to the report constitute over half of the market province wide. The report found that even though drug plans incorporate diverse strategies aimed at reducing generic drug costs, such strategies do not provide viable incentives for generic drug manufacturers to offer competitive prices to Canadians. It concludes that despite increased competition in the supply of generic drugs, Canadians are not feeling the impact by way of price reduction as they should.

Family/Criminal Law: Pornography and Child Pornography

The British Columbia Supreme Court has delivered its reasons for judgment in *Carrier v. Tate* [2007] BCJ 1591 – hyperlink not available. In this case, the Plaintiff seeks an order for joint custody and guardianship of his two boys with the Defendant (S & R) aged 5 and 2 years respectively. He also seeks to have his home as the primary residence for the children. He is not opposed to scheduled access for the Defendant who is the children's mother. On her part, the Defendant seeks an order for sole custody and guardianship and opposes the Plaintiff's access to the children unless her (the Defendant) appointed counselor is of the opinion that such access will be in the children's best interest. Even then, the

Defendant seeks that if access be given to the Plaintiff, it must be under the supervision of a paid professional access supervisor.

Both parents have had a checkered relationship of sorts. Things went sour when the mother was pregnant with the second child and they had to separate. Since separation, the boys resided with their mother who at the time of this action lived in a house owned by her and her common law partner.

The Defendant's principal allegation is that the Plaintiff has sexually abused the elder son ("S") and that he was a bad parent who could not be trusted to protect the children from harm or provide them safety. In an attempt to prove most of her allegations, the Defendant presented evidence of tape recorded conversations between her and the Plaintiff. In addition, she alleges that the Plaintiff was predisposed to pornography. The Defendant led evidence to show that the Plaintiff had a serious interest in internet pornography (sexually explicit adult materials) which he accessed frequently though his computer. However, she did not convince the court that the Plaintiff was in any way engaged in child pornography. In the court's observation, "the term "pornography" in the *Criminal Code* is used only in relation to child pornography"(¶60).

In the course of their relationship, the Defendant grew increasingly suspicious about the Plaintiff and started checking his cell phone communications. This surreptitious conduct revealed that the Plaintiff had been calling telephone chat lines and dating services. Probing further, the Defendant contacted a woman with whom the Plaintiff had had paid sex. That same woman played back to the Defendant the Plaintiff's recorded telephone conversation in which he advised the woman not to tell the Defendant about the affair. The Defendant subsequently took hardened impression of this experience and was of the opinion that the Plaintiff "had forfeited his right to be a parent" (¶84). Furthermore, coupled with her suspicions and some doubtful evidence relating to S's behavior, the Defendant became strongly of the opinion that the Plaintiff did or will sexually abuse "S". The couple subsequently separated and the Defendant maintained an overbearing attitude toward the Plaintiff and her family and frustrated the Plaintiff's desire to maintain a qualitative contact with their sons. To press further her resolve, the Defendant defied the court's earlier order for Plaintiff's unsupervised access to the children.

At a period of opportune contact between the couple after their separation, the Defendant "took advantage of these visits to go through Mr. Carrier's [the Plaintiff] credit card receipts and photographs she found on his desk" (¶108). The Defendant was to later arrange with a third party (her former landlord) to enter the Defendant's home in his absence and removed his laptop computer which he bought after their separation. She denied having taken the computer when contacted by the Plaintiff but months later after she complained to the police that the Plaintiff sexually assaulted "S," she turned in that laptop to the police. The latter, took the allegation seriously and interviewed the Plaintiff, who even volunteered and did take a polygraph test which he passed. The police returned the computer to the Plaintiff and terminated the investigation. Similarly, the Defendant got a friend of hers to "illegally access, intercept and download and print e-mail communications on a computer Mr. Carrier later purchased to replace the laptop appropriated by Ms. Tate [the Defendant]". Included in these communications were e-mail exchanges between the Plaintiff and his lawyer regarding the present action. The court held that those communications "would normally be considered privileged from disclosure" (¶117).

In addition to the foregoing, the Defendant pressed on with the investigation of an incident which her mother experienced while bathing "S". This related the child's conduct which was suggestive but not conclusive of a possible sexual abuse. The Defendant reported the incident to the police and also contacted the Ministry of Family and Children alleging that the Plaintiff had sexually abused "S". The Defendant then proceeded on a pattern of interrogation of "S" with a determined motive to implicate the Plaintiff in sexual molestation. She tendered a videotape of the result of that interrogation to prove that "S" was molested by the Plaintiff. In the court's observation, the Defendant "gave slightly different versions of the questioning process, and I do not believe that "S" said something to her that implicated Mr. Carrier, but I am also satisfied that the answer given was not true. It is clear to me, from her recounting of the event, that

"S" would not have understood the significance of what was being suggested to him; and that the persistence of the questioning made it clear until he gave an answer that satisfied his mother she would persist in questioning him and he would not be allowed to go and play" (¶122). The court held that the so-called disclosure of sexual molestation was entirely unconvincing. Moreover, an expert psychologist testified that all of the activities alleged by the Defendant for which she is of the opinion that "S" was molested by his father "fall within the normal range of behaviour for a child of S's age" (¶135).

The court held that overall, the Plaintiff was a more credible witness than the Defendant. It found that even though the Plaintiff had "strong interest in adult females and the means of acting on that interest", there is no basis to believe that he was likely to "'branch out' into homosexual pedophilic activity"(¶143). In ordering that contact between the sons and their father be stored as soon as possible, the court found that the Defendant fabricated evidence in her desire to ensure that the Plaintiff did not have any meaningful relationship with his sons. On the allegations of negligent parenting, the court held that "no parent is perfect and most parents make mistakes and have moments of inattention and occasionally may demonstrate poor judgment. Mr. Carrier has taken a number of parenting courses since separation to improve his parenting skills and I am satisfied that he is now sufficiently well informed and vigilant that the children will not be exposed to any undue risk while in his care".(¶152).

The court noted that the Defendant's conduct before the children is less than exemplary and that she is sometimes incapable of controlling herself even when the welfare of the children is at stake. However, the court found that the Defendant's home represents the status quo for the children and their best interest at this point does not warrant tampering with that status quo. The court noted that the father is also in position to provide an appropriate home that meets the children's best interest. In making an order of joint custody and in taking into consideration the Defendant's prior contempt of the court, the court noted that the order hereby made is temporary and will last for 24 months. In the court's words, "I have decided to allow Ms. Tate [the Defendant] one final chance to demonstrate that she is capable of allowing her sons to have a relationship with their father, and his extended family, that will foster strong bonds of love and affection … In the event that she is unwilling or unable to change her behaviour, and to carry out the terms of the order I am making, I will have no choice but to move the children from her home to that of their father, and I will do so" (¶164).

Force Majeure Exemption from Quality of Service Standards for Telephone Service Providers

The CRTC has created a *force majeure* exemption from the quality of service standards which apply to local telephone service providers (Known as ILECs, incumbent local exchange carriers). The quality of service standards themselves date back to 1982, when the CRTC created *Quality of Service Indicators for Use in Telephone Company Regulation*. That regime was reviewed in 1994 because of the introduction of facilities-based competition and the proposed shift to price cap regulation. Accordingly in 1997 an interim set of 16 quality of service indicators was introduced along with interim performance standards. That regime required ILECs to file quarterly reports and to explain the reasons for any non-compliance with the standards, as well as to provide a detailed plan for rectifying the situation and preventing it from re-occurring. Subsequently the interim standards were confirmed and three additional standards were included.

Initially no enforcement mechanism accompanied the quality of service standards, but after substandard performances by ILECs between 1998 and 2000 the CRTC decided that competitive pressure would be insufficient to ensure that the standards were met. Accordingly a regime was created which included a retail rate adjustment plan, whereby an ILEC could suffer a rate adjustment of up to 5% of its total annual business and residential local revenues. The size of the adjustment would depend on the number of indicators not satisfied by the ILEC and on the extent of the failure.

The regime included recognition that quality of service could be affected by factors beyond an ILEC's control, such as natural disaster or other adverse events. One issue was whether labour

disruptions could qualify as an adverse event. Initially the CRTC dealt with each adverse event on a case-by-case basis to determine whether it adequately explained any failure to comply with the quality of service standards. Subsequently the CRTC invited comment on whether rather than treating each case individually, the standards should include a *force majeure* clause acknowledging that no penalty would apply where standards were not met due to one or more of a designated list of adverse events. A further issue was whether labour disruptions should be part of that list.

Parties argued both for and against the departure from a case-by-case approach, but ultimately the CRTC decided that a *force majeure* clause was appropriate. There had in fact been consistency in the way cases had been decided even though they were decided on a case-by-case basis. Further, even if a *force majeure* clause were in place the ILEC would be required to prove that the listed adverse event was the cause of the substandard performance.

On much the same basis the CRTC decided that labour disruptions should be included on the list of adverse events. One could argue that a labour disruption was not unpredictable and were within the control of the ILEC. In fact, though, that was not the conclusion that the CRTC had reached in the past in individual cases, and they concluded that as a general rule it was not correct.

Accordingly the CRTC created a *force majeure* clause stating:

> No penalty shall apply in a month where failure to meet the retail or competitor quality of service standard is caused, in that month, by fire, acts of God, labour disruptions (such as work stoppages, strikes, lockouts and similar labour disruption events), default or failure of another carrier, epidemics, war, civil commotions including acts of terrorism, acts of public authorities or other events beyond the reasonable control of the Company.

Intimidation Through Use of Email

The British Columbia Supreme Court, in *R. v. Mirsayah*, has convicted an accused of intimidation in connection with a threatening message he sent via email.

The accused was a teaching assistant at the University of British Columbia at a time when that group was on strike. The university managed to have the teaching assistants legislated back to work, though in fact some picketing continued. A few days later an email was sent to the university president, advising of threats to kill or injure her children and to set fire to her house. The email purported to be from someone named Adam Gaphin, who did not exist, and the email account had been set up solely for the purpose of sending the threatening message.

The email was determined to have been sent from a computer in an undergraduate computer lab at the University. That computer had accessed the internet using the accused's logon information both at the time the email account was created as well as at the time the email was sent. The accused was the lab supervisor that day and his security codes had been used both to open and to close the lab. As a result police executed a search warrant at his home and from his backpack seized a floppy disk containing two files: one contained the text of the email and the other contained the user name and password associated with the "Adam Gaphin" email account. Both files were created around the time the email was sent.

The accused defence was that he had written the email but had not sent it. He claimed to have written the email on his home computer the day before as a therapeutic exercise, not intending to send it. He showed it to his wife, he said that she would send it if he did not, but he told her not to. He also testified that the next day, while he was scheduled to work in the computer lab, he went to North Vancouver to pick up his youngest child while his wife looked after the lab. When he returned later to close up the lab he found the floppy disk and put it in his backpack. He also testified that he later wiped all traces of the letter from his home computer, again in a therapeutic gesture similar to tearing up a letter.

The accused's wife also testified, stating that she had used the accused's account information while in the lab to create the email account and send the letter. Nonetheless the accused was convicted.

At issue on appeal were whether the trial judge had interfered too much in questioning and whether the trial judge had wrongly inferred guilt on the basis of a concocted alibi. In fact the appeal judge found that the trail judge had erred in the second regard, but dismissed the appeal based on the "harmless error" provisions in the Criminal Code's appeal provisions. This provision permits an appeal to be dismissed despite a legal error where the evidence is so overwhelming that the accused would inevitably have been convicted despite the mistake.

The appeal judge noted that the evidence against the accused was overwhelming, including that he wrote the letter, was the supervisor of the lab where the email was sent at the time it was sent, his personal logon information was used, he had the floppy disk with the letter and email account information, his office computer (to which his wife did not have access) was used shortly after the email was sent, no trace of the email was found on his home computer, and he made statements which seemed to implicate him. For his story to be accepted, and for his wife's version of events to be true, a number of unlikely facts would need to be accepted, including that she had sent the letter notwithstanding the accused's view that she shouldn't; that she copied it onto a floppy disk on her home computer at a time when, according to that computer's records, it was not in use; that all traces of the document on the home computer were removed by a "wiping program" used by the accused, but he did not take any steps to erase the document from the floppy disk; that (to account for the date on the document corresponding to the day the email was sent, not the day before when the accused said he had written it) she opened the document on the floppy disk, copied it to a new document, closed the original document, then overwrote it with the new document, though there would be no reason to do this; that she left the floppy disk in the computer lab where the accused found it, and; that she sent the accused to North Vancouver to pick up their child at a time when he was supposed to be at work, and filled in for him at his job.

The only realistic conclusion, the appeal judge decided, was that the accused had sent the email, and so despite the legal error at trial the accused's conviction was upheld.

2ième partie

Injonction interlocutoire enjoignant de retirer un communiqué de presse d'un site web – Refusée

Le demandeur veut obtenir une injonction provisoire enjoignant au Procureur général et à l'Office de protection du consommateur (OPC) de retirer du site web un communiqué de presse faisant état des condamnations du demandeur en vertu de la Loi sur les agents de voyage et son règlement.

Pour qu'une ordonnance soit accordée, la demande doit répondre aux quatre critères jurisprudentiels : l'urgence, l'apparence de droit, le préjudice irréparable et le poids des inconvénients. Le tribunal refuse l'ordonnance et retient les arguments des défendeurs quant à l'urgence et au poids des inconvénients. Le demandeur ne peut prétendre à une urgence puisqu'il affirme dans son affidavit qu'il travaille à la mise en place de son projet d'affaires depuis cinq ans alors que le communiqué apparaît sur le web depuis le 6 juillet 2005. Ensuite, le préjudice allégué est purement théorique et l'intérêt privé du demandeur à mener ses projets d'affaires à bien ne fait pas le poids vis-à-vis l'intérêt public de protection qui sous-tend la Loi sur la protection du consommateur.

Commentez cet article au Blogue de IT.CAN

- *Nasra c. Office de la protection du consommateur*, 2007 QCCS 4640, 23 octobre 2007.

Refus d'une expertise de système informatique en l'absence de preuve que cela va engendrer le résultat recherché

Dans le contexte d'une poursuite à la suite de la perte d'un contrat aux mains de la défenderesse, la partie demanderesse Solmax (qui attribue ses déboires à la concurrence déloyale des défendeurs, dont l'un de ses ex-employés) estime être en droit d'exiger une divulgation large de la preuve, incluant l'ensemble des documents et éléments matériels utilisés par les défendeurs aux fins de la préparation de leur soumission. Elle veut être en mesure d'identifier les tâches que l'un et l'autre des défendeurs ont accomplies dans la confection des documents et du bordereau de soumission. Pour ce faire, elle requiert une expertise des systèmes informatiques utilisés par les défendeurs dans le cadre de la préparation de la soumission de Solution Optimum. Elle suggère la nomination d'un expert en informatique indépendant qui procèdera à l'examen des systèmes informatiques des défendeurs, verra ce qui a été stocké sur leurs disques durs et ce que contient le fichier « Estimation de projets ».

Le tribunal rejette la requête en déclarant qu'en l'absence d'une preuve que l'expertise informatique pourra mener à la reconstitution des documents impliqués dans le litige, l'autorisation demandée revient à autoriser une « partie de pêche » dans les systèmes informatiques de la défenderesse.

- *Solmax-Texel Géosynthétiques inc. c. Solution Optimum inc.*, 2007 QCCS 4677, 14 septembre 2007.

Non responsabilité de l'encyclopédie collaborative Wikipedia en tant qu'hébergeur – France

Dans une ordonnance de référé du 29 octobre 2007, le Tribunal de grande instance de Paris a débouté trois plaignants qui poursuivaient la Fondation Wikimedia, propriétaire de l'encyclopédie en ligne Wikipédia, pour atteinte à la vie privée et diffamation étant donné que leurs préférences sexuelles avaient été révélées au détour d'un article de l'encyclopédie collaborative.

Assignée à titre d'hébergeur, le tribunal considère que l'encyclopédie Wikipédia n'est pas responsable du contenu des articles publiés. C'est la *Loi sur la confiance dans l'économie numérique* adoptée en juin 2004 qui s'applique. Aux termes de cette Loi, les prestataires d'hébergement ne peuvent voir leur responsabilité civile engagée du fait des informations qu'ils stockent s'ils n'avaient pas effectivement

connaissance de leur caractère illicite ou de faits et circonstances faisant apparaître ce caractère. De plus, les hébergeurs ne sont pas tenus d'une obligation générale de surveiller les informations stockées, ni de rechercher des faits ou circonstances révélant des activités illicites.

D'abord, les plaignant n'ont pas respecté les règles de procédure et de forme prévues par la Loi pour notifier à l'encyclopédie la présence sur son site du contenu litigieux, ce qui est essentiel pour que l'hébergeur acquière connaissance des faits litigieux et soit tenu de supprimer les passages contestés. Ensuite, Wikimédia n'est pas tenu à une obligation particulière de rechercher des contenus diffamants ou portant atteinte à la vie privée de tiers en raison du risque que son activité fait peser sur leur survenance.

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- *Marianne B. et autres/Wikimedia Foundation*, Tribunal de grande instance de Paris, Ordonnance de référé 29 octobre 2007, disponible à *legalis.net*.
- Stéphane FOUCART, « Wikipédia, ni coupable ni responsable », *Le Monde*, 2 novembre 2007.
- « Wikipédia, hébergeur sans obligation », *legalis.net*, 8 novembre 2007. Cet auteur croit qu'il faut relativiser cette décision étant donné la suppression de l'article litigieux de l'historique du site le jour de l'instance, annulant ainsi les dommages directs, le fait que les parties aient convenu d'assigner Wikipédia en tant qu'hébergeur, alors que ce statut ne va pas de soi, et enfin qu'il s'agit là d'une ordonnance de référé qui ne juge que de l'évidence.
- Lionel THOUMYRE, « Responsabilité des hébergeurs : quelques mots sur l'affaire Wikimedia », *Juriscom.net*, 6 novembre 2007. Cet auteur regrette aussi que la discussion n'ait pas porté sur le caractère « manifestement illicite » d'une information portant atteinte à la vie privée ou à caractère diffamatoire.

Google Video condamné comme hébergeur pour ne pas avoir rendu impossible l'accès à un document vidéo – France

Le Tribunal de grande instance de Paris a conclu à la responsabilité civile de Google en qualité d'hébergeur en raison du fait qu'il n'avait pas rendu impossible la remise en ligne d'un documentaire sur son service Google Video. La société de production du film « Tranquility Bay», Zadig Productions, avait constaté la diffusion de l'œuvre sur Google Video sans son autorisation ; elle avait alerté Google qui avait alors retiré le film litigieux. Mais d'autres internautes ont remis le document en ligne. À chaque occasion, les ayants droits ont dénoncé le fait à Google. Le recours en justice a été entrepris sur le reproche que Google n'a pas pris tous les moyens pour empêcher la diffusion illicite de se reproduire.

Le tribunal a considéré que Google intervenait comme un hébergeur et non comme un éditeur. Mais cela ne l'exonère pas de toute responsabilité, même limitée. Pour la première mise en ligne, le tribunal a estimé que Google avait adéquatement rempli ses obligations en retirant promptement le document illicite. Mais il a considéré que sa responsabilité était engagée pour les mises en ligne ultérieures car « informé du caractère illicite du contenu en cause par la première notification, il lui incombait de mettre en œuvre tous les moyens nécessaires en vue d'éviter une nouvelle diffusion». Les juges ont écarté l'argument de Google selon lequel chaque nouvelle mise en ligne constitue un fait nouveau nécessitant une nouvelle notification. Ils notent que le contenu concerné reste le même en dépit du fait que les internautes qui sont à l'origine de la mise en ligne sont différents.

Commentez cet article au Blogue de IT.CAN

- *Zadig Productions et autres/ Google Inc, Afa*, Tribunal de grande instance de Paris, 3ème chambre, 2ème section, 19 octobre 2007.
- Lionel THOUMYRE, « Google Video condamné pour contrefaçon », *Juriscom.net*. Cet auteur émet des réserves sur l'interprétation du tribunal selon laquelle l'hébergeur a

l'obligation de mettre en œuvre les moyens d'éviter une nouvelle diffusion dès lors qu'on lui a notifié le caractère illicite de la mise à disposition d'un document.

Un service de petites annonces en ligne tenu à une obligation de filtrage a priori – France

À la demande du Groupe LVMH qui détient les marques Kenzo, Givenchy et Guerlain, le juge des référés du Tribunal de commerce de Paris a émis une ordonnance imposant à la plate-forme de petites annonces en ligne Vivastreet de bloquer toute mise en vente de parfums ou cosmétiques des marques LVMH. L'ordonnance impose la mise en place d'un système de surveillance ciblée et temporaire pour une durée de 6 mois des annonces de ladite rubrique. Cela a pour but de prévenir l'hébergement de toute annonce proposant la vente hors du réseau de distribution sélective des demanderesses de parfums et produits cosmétiques dont le texte utilise les dénominations du Groupe LVMH ou offrant à la vente des parfums ou cosmétiques de grandes marques présentés comme « génériques ».

Il est aussi ordonné la mise en place d'un système de contrôle ciblé et temporaire pour une durée de 6 mois permettant de retirer toute annonce proposant la vente hors du réseau de distribution sélective des demanderesses de parfums et produits cosmétiques dont le texte utilise les dénominations du Groupe LVMH.

La décision applique la loi du 21 juin 2004 pour la confiance dans l'économie numérique permettant aux juges de demander une surveillance ciblée et temporaire et prévoyant que «l'autorité judiciaire peut prescrire en référé ou sur requête, à un hébergeur ou, à un fournisseur d'accès, toutes mesures propres à prévenir un dommage ou à faire cesser un dommage occasionné par le contenu d'un service de communication au public en ligne ».

- Benoît TABAKA, « Vivastreet tenu à une obligation de filtrage a priori », Juriscom.net.

Entrée en vigueur de la Loi française sur la contrefaçon

La loi du 29 octobre sur la contrefaçon a été publiée au Journal Officiel du 30 octobre 2007. Le nouveau texte concerne les droits de propriété industrielle (brevet, marque, dessin et modèle...), les droits de la propriété littéraire et artistique, ainsi que les appellations d'origine et les indications géographiques. Il renforce les moyens mis à disposition des ayants droits pour défendre leurs créations et leurs inventions.

La loi crée un droit d'information au profit des titulaires de droits de propriété intellectuelle qui permet aux autorités judiciaires d'ordonner la communication d'informations sur l'origine et les réseaux de distribution des marchandises ou des services qui portent atteinte à un droit de propriété intellectuelle. Des dispositions prévoient le renforcement de la protection des preuves de la contrefaçon et la mise en place de mesures provisoires à l'encontre des contrefacteurs et des intermédiaires (saisie conservatoire des biens mobiliers et immobiliers, blocage de comptes bancaires...). La loi prévoit également la possibilité de retrait des circuits commerciaux et de destruction des produits contrefaits, ainsi que des matériels ayant servi à leur création ou leur conception.

- Étienne WERY, « La loi sur la contrefaçon est adoptée :Attention aux sanctions », Droit & Technologies, 5 novembre 2007. La loi no 2007-1544 du 29 octobre 2007 de lutte contre la contrefaçon est disponible à : http://www.droit-technologie.org/legislation-230/loi-sur-la-contrefacon.html.

Banque en ligne – Europe

Le 1er novembre 2007 entrait en vigueur dans l'ensemble de l'Union européenne la nouvelle réglementation MiFID concernant les marchés d'instruments financiers qui touche directement le secteur de la banque en ligne et des services financiers en ligne. Le but premier de cette directive est, entre autres, une meilleure protection des investisseurs par une meilleure connaissance du profil de l'investisseur et une information plus claire. Cette réglementation tente de créer « un subtil équilibre entre une meilleure qualité du conseil

dans l'investissement, et une responsabilisation de l'investisseur mieux informé. »

- Étienne WERY, « Ce premier novembre, MiFID entre en vigueur : la banque en ligne se transforme en profondeur », *Droit & technologies*, 2 novembre 2007.
- *Directive 2004/39/CE du Parlement européen et du Conseil du 21 avril 2004 concernant les marchés d'instruments financiers, modifiant les directives 85/611/CEE et 93/6/CEE du Conseil et la directive 2000/12/CE du Parlement européen et du Conseil et abrogeant la directive 93/22/CEE du Conseil*, voir http://ec.europa.eu/internal_market/securities/isd/mifid_fr.htm.

À signaler

- COMMISSION D'ACCÈS À L'INFORMATION, *Rapport annuel de gestion 2006-2007*.
- Miriam COHEN, « L'affaire Dell : qu'en est-il de l'erreur sur le prix? », *Lex Electronica*, vol. 12, n°2, Automne / Fall 2007. Cet article a été écrit avant que ne soit rendue la décision *Dell Computer Corp. c. Union des consommateurs*, 2007 CSC 34 (CanLII).
- *Décret relatif au droit de réponse applicable aux services de communication au public en ligne*, Décret no 2007-1527 du 24 octobre 2007, legifrance.gouv.fr. Ce décret, pris en application de l'article 6 de la *Loi pour la confiance dans l'économie numérique*, aménage de façon substantielle le régime du droit de réponse applicable aux services de communication en ligne.
- Lionel THOUMYRE, « La responsabilité pénale et extra-contractuelle des acteurs de l'Internet », Lamy droit des médias et de la communication, juin 2007, Étude 464, disponible à http://www.juriscom.net/uni/visu.php?ID=978.

This newsletter is intended to keep members of IT.Can informed about Canadian legal developments as well as about international developments that may have an impact on Canada. It will also be a vehicle for the Executive and Board of Directors of the Association to keep you informed of Association news such as upcoming conferences.

If you have comments or suggestions about this newsletter, please contact Professors Robert Currie, Chidi Oguamanam and Stephen Coughlan at it.law@dal.ca if they relate to Part 1 or Pierre Trudel at pierre.trudel@umontreal.ca if they relate to Part 2.

Disclaimer: The IT.Can Newsletter is intended to provide readers with notice of certain new developments and issues of legal significance. It is not intended to be a complete statement of the law, nor is it intended to provide legal advice. No person should act or rely upon the information in the IT.Can Newsletter without seeking specific legal advice.

Le présent bulletin se veut un outil d'information à l'intention des membres d'IT.Can qui souhaitent être renseignés sur les développements du droit canadien et du droit international qui pourraient avoir une incidence sur le Canada. Le comité exécutif et le conseil d'administration de l'Association s'en serviront également pour vous tenir au courant des nouvelles concernant l'Association, telles que les conférences à venir.

Pour tous commentaires ou toutes suggestions concernant la première partie du présent bulletin, veuillez contacter les professeurs Robert Currie, Chidi Oguamanam et Stephen Coughlan à l'adresse électronique it.law@dal.ca ou en ce qui concerne la deuxième partie, veuillez contacter Pierre Trudel à pierre.trudel@umontreal.ca.

Avertissement : Le Bulletin IT.Can vise à informer les lecteurs au sujet de récents développements et de certaines questions à portée juridique. Il ne se veut pas un exposé complet de la loi et n'est pas destiné à donner des conseils juridiques. Nul ne devrait donner suite ou se fier aux renseignements figurant dans le Bulletin IT.Can sans avoir consulté au préalable un conseiller juridique.