

Federal Court



Cour fédérale

Date: 20060531

Docket: T-528-04

Vancouver, British Columbia, May 31, 2006

**PRESENT:** The Honourable Mr. Justice Martineau

**BETWEEN:**

**CANADIAN PRIVATE COPYING COLLECTIVE (CPCC)**

**Applicant**

**and**

**ENVIRO DATA PRODUCTS INC.**

**Respondent**

**ORDER**

**UPON** the application under subsection 34(4) of the *Copyright Act* of the Applicant, Canadian Private Copying Collective (CPCC);

**UPON** reviewing the Applicant's record and the letter dated May 31, 2006, addressed by Mr. Imi Moloo on behalf of the Respondent, Enviro Data Products Inc.;

**UPON** considering the submissions made by counsel on behalf of the Applicant at the hearing held in Vancouver on May 31, 2006;

**UPON** being advised that the Respondent has and may continue to import into and sell in Canada blank audio recording medium which are governed by the provisions of Part VIII of the *Copyright Act* and the relevant private copying tariffs certified by the Copyright Board of Canada since 1999 (the Tariff);

**UPON** considering that the Respondent has failed to keep or produce records and has failed to submit reports and remit levies in a timely manner;

**UPON** being satisfied that an order should issue to enforce compliance of the Respondent's obligations as an importer and seller of blank recording media under the Tariff;

**UPON** considering that the Tariff provides that the Applicant may collect interest on levies that are not received by the due date and that section 7 of the Tariff establishes that levies for blank audio recording medium sold or otherwise disposed of in any given account shall be due no later than the last day of the month following that accounting period;

**UPON** considering that the interest on levies that have not been received by the due date has been calculated by the Applicant on the assumption that all the levies paid by the Respondent relate to the earliest of the two-month reporting periods covered by the January 7, 2002, the April 23, 2002, the August 22, 2002, and the December 10, 2002 reports;

**UPON** accepting the Applicant's method of calculation of interest and uncontradicted evidence submitted by the Applicant with respect to same;

**UPON** finding that the Applicant is entitled to claim from the Respondent the amount of \$31,971.40 for outstanding interest;

**UPON** determining that it is appropriate to award costs to the Applicant in the amount of \$6,500.00 in lieu of any assessed costs;

**THIS COURT ORDERS that:**

- 1) As of January 1, 2005, the Respondent will keep and preserve for a period of six years records which identify all purchases and sales of "blank audio recording medium" as that term is defined by the Tariff. The records will account for the use of the blank audio recording medium either in an activity not subject to levy (e.g. export) or in an activity subject to levy (e.g. resale) for the purpose of verifying the amount payable under the Tariff.
- 2) The Respondent will keep the following records to identify the purchasing and selling transactions relating to the blank audio recording medium as follows:
  - i) **Purchasing:** In respect to purchasing the records must:
    - (1) record all purchase volumes with product code or description and supplier noted;
    - (2) record volumes transferred;
    - (3) record volumes received on consignment or as an agent with product code and supplier noted;
    - (4) document the purchases and/or handling of blank audio recording medium by maintaining the following:
      - (a) purchase invoices from all suppliers and/or agents and related or affiliated companies;
      - (b) transportation, shipping, transfer, delivery slips or customs clearance and duty slips, provided to Respondent and the Respondent will make best efforts to obtain these records; and
      - (c) details of contracts or agreements relating thereto.

- ii) **Sales:** With respect to sales the records must:
- (1) record all volumes by product code or description, relieved from inventory or storage or delivered directly from the supplier to the customer, including those used in production, as samples, exported, transferred or sold;
  - (2) record all volumes forwarded under an agency or consignment arrangement;
  - (3) include documentation to support all Tariff and non-Tariff blank audio recording medium dispositions through sales, consignments, transfers and used in production or as samples, which will include:
    - (a) sales invoices;
    - (b) transportation, shipping, transfer or delivery slips provided by the Respondent and the Respondent will make best efforts to obtain these records;
    - (c) consignment agreements; and
    - (d) sales returns credit notes.
- 3) The Respondent must also, to the best of its ability, keep accurate and complete accounting information as follows:
- i) a list of all product codes or descriptions for goods used in the business;
  - ii) periodic financial reports; and
  - iii) reports on periodic volume physical inventory counts and reconciliation with accounting data;
- 4) The parties are at liberty to apply to the Court for further direction in respect to the compliance with the terms of this Order and the Applicant reserves the right to request

further documents, records or information not provided for in this Order which it determines are necessary to carry out its audit rights under the Tariff.

- 5) The Applicant will be entitled to the costs of any audit it conducts of the records of the Respondent described above, and the costs of enforcing the Order, if this Court determines that there has not been substantial compliance with the record keeping provisions set out in paragraphs 1 to 3 above.
- 6) The Respondent will pay to the Applicant outstanding interest in the amount of \$31,971.40 plus costs in the amount of \$6,500.00, in lieu of any assessed costs

“Luc Martineau”

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Judge