Case In Point

Supreme Court of Canada Grants Worldwide Injunction Against Google

Date: June 29, 2017

On June 28, 2017, a majority of the Supreme Court of Canada granted a worldwide interlocutory injunction against Google, requiring it to de-index websites of a distributor, Datalink. Datalink was using those websites to illegally sell intellectual property of another company and was also in breach of several court orders. The decision indicates that Canadian courts are mindful of the global reach of the Internet when dealing with online businesses and are willing to issue orders reaching beyond Canadian jurisdiction.

In Google Inc. v. Equustek Solutions Inc., Equustek, a small technology company in British Columbia, had launched an action against the Datalink group of companies. Equustek claimed that Datalink, while acting as a distributor of Equustek's products, began to re-label one of the products and pass it off as its own. Equustek also claimed that Datalink acquired its intellectual property and used it to design and manufacture a competing product. Equustek discovered this information in 2011 and terminated its distribution agreement with Datalink. It demanded that Datalink delete all references to Equustek's products and trademarks on its websites. Datalink initially defended the claim but eventually abandoned it and, despite several court orders prohibiting the sale and use of Equustek's intellectual property, continued to sell the products globally through its websites. Equustek approached Google and requested that it de-index Datalink's websites but Google refused.

Equustek brought an application seeking an order requiring Datalink to cease operating or carrying on business through any website. The British Columbia Supreme Court issued the requested order and Google proceeded to de-index 345 webpages associated with Datalink but did not de-index all of its websites. As a result, Datalink was able to move the impugned content to new pages within Google's websites thereby circumventing the court order. Google also limited the de-indexing to searches conducted on "google.ca" which was ineffective as users could search Datalink's contents through Google's other search results. Equustek, therefore, obtained an order prohibiting Google from displaying any part of Datalink's websites on any of its search results worldwide.

The Court of Appeal for British Columbia dismissed an appeal from that decision, which was upheld by a majority of the Supreme Court of Canada. The majority reiterated the test for granting an interlocutory injunction and stated that the test had been met in this case: there was a serious issue to be tried; Equustek was suffering irreparable harm as a result of Datalink's ongoing sale of its competing product through the Internet; and the balance of convenience was in favour of granting the order sought.

The majority of the Supreme Court reiterated that injunctive relief can be ordered against someone who is not a party to the underlying lawsuit when the non-parties' actions, whether deliberate or not, facilitate the harm. In this instance, the Court noted that Datalink was unable to carry on business in a commercially viable way without its websites appearing on Google. Therefore, the injunction flowed from the necessity to prevent Google from facilitating Datalink's ability to continually harm Equustek. Recognizing the Internet's global reach, the majority stated that the only way the injunction could be effective was if it was global. Not doing so, and only restricting the injunction to "google.ca," would allow purchasers to buy from Datalink's websites.

The decision is significant as it puts an onus on online businesses to take steps to monitor and regulate activity on their web pages. It is important, therefore, for companies to visit their online content and create strategies to monitor that content to minimize any risk.