

COURT FILE NUMBER ~~2301~~ 2303 13143
COURT COURT OF KING'S BENCH OF ALBERTA
JUDICIAL CENTRE EDMONTON
PLAINTIFF PRIMERICA, INC., PRIMERICA LIFE INSURANCE COMPANY, PRIMERICA FINANCIAL SERVICES LLC, PFSL INVESTMENTS CANADA LTD., and PRIMERICA LIFE INSURANCE COMPANY OF CANADA
DEFENDANT MARCO MOUKHAIBER
DOCUMENT NOTICE OF APPLICATION



ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT

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NOTICE TO THE RESPONDENT

This application is made against you. You are a Respondent.

You have the right to state your side of this matter before the Court.

To do so, you must be in Court when the application is heard as shown below:

Date: July 21, 2023
Time: ~~2:00 pm or such other time as this Honourable Court may direct~~ 10:00 AM
Where: Virtually via Webex
Before Whom: Justice in Chambers

Go to the end of this document to see what you can do and when you must to it.

Remedy claimed or sought:

1. The Applicants, Primerica, Inc., Primerica Life Insurance Company, Primerica Financial Services LLC, PFSL Investments Canada Ltd., and Primerica Life Insurance Company of Canada (collectively, “**Primerica**”), seek the following relief:
 - (a) An order declaring the notice period and time for service of this application is abridged and deemed good and sufficient;
 - (b) An order declaring that service on the Respondent, Marco Moukhaiber, by email is deemed good and sufficient;
 - (c) A mandatory interim injunction:
 - (i) requiring the Respondent to deliver to the plaintiffs and the Court a list of all social media accounts and domains which he directly or indirectly controls;
 - (ii) requiring the Respondent to remove and destroy the Primerica Videos (as defined below) and any online content posted by the Respondent reproducing, promoting, or mentioning the Primerica Videos in any way;
 - (iii) requiring the Respondent to discontinue membership in all chat groups and social media platforms in which the Respondent surveils the activity of Primerica employees and business associates through phony accounts or otherwise;
 - (iv) requiring the Respondent to delete and destroy any material in his possession for which Primerica owns the copyright, whether in hard copy, posted to his online accounts, or saved in electronic form;
 - (v) requiring the Respondent to return a sworn Statutory Declaration to the Applicants within five days of the order, in a form acceptable to the Applicants, attesting to full compliance with the terms of this order;
 - (vi) to remain in effect until August 31, 2023 or until such time as this Court can adjudicate a summary judgment application on the merits, whichever is earlier;
 - (d) A prohibitive interim injunction restraining and enjoining the Respondent from:
 - (i) infringing the Applicants’ copyright in the Primerica Logo and Primerica Policies (each as defined below) pursuant to the *Copyright Act*, including without limitation by creating, posting, sharing and/or streaming any content which infringes the Applicants' copyright by reproducing the

Primerica Logo and Primerica Policies, whether in print, electronic form, over the internet, or in any other form or media now known or later devised;

- (ii) using the Primerica Trademarks (as defined below) in such a manner that is likely to have the effect of depreciating the value of the goodwill attaching to such trademarks contrary to subsection 22(1) of the *Trademarks Act*, including without limitation through use of the Primerica Trademarks in association with the AlwaysMarco Accounts (as defined below), and any related websites, domain names or social media accounts;
 - (iii) communicating, publishing or posting any online or print material reproducing or promoting the Primerica Videos or parts thereof;
 - (iv) publishing, posting, creating, appearing in, or otherwise participating in any online or print material that are defamatory with respect to Primerica in any way;
 - (v) publishing or posting of any material concerning these proceedings, or causing to be published or posted any material concerning these proceedings, as well as any material (including images) or commentary concerning any participant in these proceedings, including but not restricted to any counsel, Court staff or members of the judiciary, but excluding himself provided that any publication or posting about himself is not connected in any way to these proceedings or is not otherwise subject to any ongoing injunction; and
 - (vi) to remain in effect until August 31, 2023 or until such time as this Court can adjudicate a summary judgment application on the merits, whichever is earlier;
- (e) An order requiring that YouTube, TikTok, Twitter, Facebook, Instagram, Discord, Patreon, Reddit and Rumble shall be served with the executed order as notice that the Primerica Videos and any online content posted by the Respondent reproducing, promoting, or mentioning the Primerica Videos in any way are ordered to be removed as being unlawful;
 - (f) Costs of this application; and
 - (g) Such further and other remedies as this Honourable Court directs.

Grounds for making this application:

The Parties

2. Primerica, Inc. is a publicly traded financial institution that provides investment, insurance and financial services to middle-income families across North America. Primerica, Inc. is

a corporation incorporated in Delaware, and is the parent organization in a corporate family consisting of several affiliated and subsidiary companies, including the other plaintiffs, that together conduct business as “Primerica”. The other plaintiffs (listed below) all operate in Canada as subsidiaries of Primerica, Inc.:

- (a) Primerica Life Insurance Company is a corporation incorporated in Georgia, USA.
 - (b) Primerica Financial Services LLC is a corporation incorporated in Nevada, USA.
 - (c) PFSL Investments Canada Ltd. is a corporation incorporated in Canada.
 - (d) Primerica Life Insurance Company of Canada is incorporated in Canada by Letters Patent dated August 21, 1991, pursuant to the federal statute which was succeeded by the *Insurance Companies Act*.
3. The Respondent is a social media content creator based in Edmonton, Alberta who operates a number of accounts on various platforms that use the name or handle “AlwaysMarco” (the “**AlwaysMarco Accounts**”). The Respondent creates content on YouTube and shares previews and links of this content on his other social media platforms, and earns revenue from his social media presence and content, paid subscriptions, sale of related merchandise, and through GoFundMe campaigns.

The Respondent’s Social Media Campaign against Primerica

4. Between December 14, 2021 and July 19, 2023, the Respondent has posted and promoted multiple videos relating to Primerica on his AlwaysMarco Accounts (the “**Primerica Videos**”). The Respondent primarily posts the Primerica Videos to YouTube, and then shares or promotes the content on his other social media accounts in order to promote his YouTube account and other social media accounts.
5. The Respondent has also posted portions of the Primerica Videos as short-form videos on YouTube Shorts and as short videos on Instagram. The Respondent has promoted and linked the Primerica Videos on his TikTok, Twitter, Facebook, Instagram, Discord, Patreon, Reddit and Rumble accounts, and has appeared in videos created and posted by other users, with the intent of promoting the Primerica Videos (the “**Social Media Posts**”).
6. The Respondent earns revenue and grows his following by posting the Primerica Videos and others like it and making the Social Media Posts.

7. During this time, Primerica has sent multiple cease-and-desist letters to the Respondent. Each time, the Respondent has failed to comply with such letters and has instead displayed them in the Primerica Videos in order to promote his content.
8. The Primerica Videos use Canadian trademark registrations owned by Primerica, Inc. (the “**Primerica Trademarks**”). The Primerica Videos prominently use, display and alter the Primerica Trademarks without Primerica’s consent or authorization.
9. Primerica owns copyright in the design elements of the Primerica logo (the “**Primerica Logo**”). Primerica also owns the copyright in the design elements of its internal policies, guidelines, and training material (the “**Primerica Policies**”). The Primerica Videos reproduce and alter the Primerica Logo, and display the Primerica Policies, without Primerica’s consent or authorization.
10. The Primerica Videos include false and misleading statements about Primerica, including that Primerica:
 - (a) engages in “crime”, “fraud”, and “illegal” activity; and
 - (b) is a “cult”, a “scam”, and an illegal “pyramid scheme”.
11. Primerica has submitted requests to YouTube to remove the Primerica Videos. The Respondent has not responded to these requests other than to mock Primerica on social media and signal future similar conduct.
12. Primerica has submitted requests to the Respondent to remove the Primerica Videos and to cease and desist the use of the Primerica Trademarks and Primerica Logo. On April 14, 2023, Primerica’s counsel sent a cease-and-desist letter to the Respondent notifying the Respondent that the Primerica Videos violate the *Copyright Act*, RSC 1985, c C-42, *Trademarks Act*, RSC 1985, c T-13, and *Competition Act*, RSC 1985, c C-34 (the “**April 14, 2023 Letter**”). The Respondent failed to comply with the April 14, 2023 Letter. Instead, the Respondent posted a Primerica Video that day titled, “PRIMERICA is threatening to sue me”, displaying the contents of that letter.

13. Most recently, in response to the Primerica Videos posted on July 14, 2023 and July 15, 2023, Primerica's counsel sent another cease-and-desist letter to the Respondent via email on July 16, 2023, (the "**July 16, 2023 Letter**").
14. The Respondent did not comply with the July 16, 2023 Letter. Instead, the Respondent posted the following material to his Instagram account:
 - (a) "Wait til you see what I do next [...] I'm gonna use this document to control the IG profiles of all Primerica's top leaders."
 - (b) "Primerica's stock hit it's [sic] lowest point in a week almost the exact moment my video dropped"
 - (c) "SCURRYING LIKE RATS [...] I know you're reading this so just know I have access to ALL of your telegram group chats. I see everything, you can't hide!!!"
 - (d) "just got a second cease & desist letter from Primerica telling me it [sic] I don't delete all Primerica-related content by tmrow at 11 am they're suing lmao".
15. Upon learning that the Respondent intended to post a livestream video which was likely to include further content related to Primerica, Primerica sent another cease-and-desist letter to the Respondent via email on July 19, 2023 (the "**July 19, 2023 Letter**"). The Respondent did not comply with the July 19, 2023 Letter. Instead, the Respondent posted another Primerica Video on July 19, 2023.

Impact of the Primerica Videos

16. As a result of the Primerica Videos, Primerica will suffer irreparable harm to its business reputation and goodwill.
17. The Primerica Videos are defamatory. Among other things, they communicate to the public unfounded, untrue and damaging statements that Primerica is engaged in unlawful activities and is a "scam." As result of the Respondent's defamatory comments in the Primerica Videos, Primerica has suffered, and is likely to continue to suffer, damages in the form of loss of reputation and goodwill among its customers, employees and licensed representatives.
18. The Respondent's subscription counts on the AlwaysMarco Accounts are rising, as are the number of views of the Primerica Videos and Social Media Posts. The reach of Primerica

Videos and related Social Media Posts is global in scope. The Respondent has earned revenue as a result of the Primerica Videos and the Social Media Posts.

19. The Respondent has increasingly targeted Primerica's current employees and representatives in his more recent Primerica Videos, and has admitted that much of the information obtained for the Primerica Videos was procured through deceit and other unlawful means.
20. Further, the Respondent admits in the Primerica Videos and Social Media Posts that the intent of the Primerica Videos and Social Media Posts is to harm Primerica and its reputation, either expressly or by implication, and he has plans to undertake further activities with the same objective.

Basis for this Injunction

21. There is an urgent need for the injunction and it is in the interest of justice to abridge the time for notice and service of this application and supporting materials.
22. The Respondent has accepted correspondence relating to this matter via email. Given the urgent need for this injunction it is in the interest of justice and efficiency for service by email to be deemed good and sufficient.
23. Primerica seeks injunctive relief pursuant to section 53.2 of the *Trademarks Act*, RSC 1985, c T-13, section 34 of the *Copyright Act*, RSC 1985, c C-42 and the *Judicature Act*, RSA 2000, c J-2.
24. An injunction restraining the Respondent is warranted because:
 - (a) there is a serious issue to be tried and further, and in the alternative, Primerica has a strong *prima facie* case against the Respondent;
 - (b) Primerica will continue to suffer substantial and irreparable harm if the Primerica Videos remain accessible and the Respondent continues to post content about Primerica; and
 - (c) the balance of convenience favours granting injunctive relief.

25. Primerica has made an undertaking as to any damages arising from the granting of this application.
26. An injunction restraining the Respondent is also warranted on the basis of defamation as:
 - (a) the Primerica Videos are defamatory in the sense that they lower Primerica's reputation;
 - (b) the Primerica Videos plainly refer to Primerica;
 - (c) the Primerica Videos were communicated widely via social media channels and the internet; and
 - (d) the Respondent has no sustainable defence.

Material or other evidence to be used in support of this application:

27. The Affidavit of Mark Beauchamp, sworn July 18, 2023.
28. The Affidavit of Angela Kaiser, sworn July 20, 2023.
29. The Pleadings and other material filed in this Action.
30. Such further and other material as counsel may advise and this Honourable Court may permit.

Applicable rules:

31. *Alberta Rules of Court*, Alta Reg 124/2010, Rules 1.2, 1.3, 1.4, 6.2, 6.3, 13.5.
32. Such further and other rules as counsel may advise and this Honourable Court may permit.

Applicable Acts and regulations:

33. *Judicature Act*, RSA 2000, c J-2, ss 8, 9, 11, 13(2).
34. *Copyright Act*, RSC 1985, c C-42.
35. *Trademarks Act*, RSC 1985, c T-13.
36. *Competition Act*, RSC 1985, c C-34.

37. Such further and other Acts and regulations as counsel may advise and this Honourable Court may permit.

Any irregularities complained of or objection relied on:

38. Not applicable.

How the application is proposed to be heard or considered:

39. Virtually, before the presiding Justice.

WARNING

If you do not come to Court either in person or by your lawyer, the Court may give the applicant(s) what they want in your absence. You will be bound by any order that the Court makes. If you want to take part in this application, you or your lawyer must attend in Court on the date and at the time shown at the beginning of the form. If you intend to give evidence in response to the application, you must reply by filing an affidavit or other evidence with the Court and serving a copy of that affidavit or other evidence on the applicant(s) a reasonable time before the application is to be heard or considered.