

April 19, 2010

Filed via epass

Robert A. Morin
Secretary General
Canadian Radio-television and
Telecommunications Commission
Ottawa, Ontario
K1A 0N2

Dear Mr. Morin:

Re: Application No. 2010-0150-3 – Fight Media Inc.

We act as counsel to Fight Media Inc. (“FMI”). This reply to interventions is filed in response to the interventions filed by the parties listed on the attached Intervention Distribution List.

The majority of the interventions are from minority shareholders of Blackout Media Corp. (“Blackout”), and others are from disgruntled minority shareholders of TFN Global Inc. (“TFN Global”, formerly Blackout Communications Inc.). We note that many of the interventions are comprised of one paragraph “form letters” generated from a web blog page. We assume that in accordance with the Commission’s usual procedure, these form letters will be counted as one intervention.

An intervention purporting to be on behalf of Blackout was filed by the law firm Scarfone Hawkins on April 9, 2010. By letter dated April 15, 2010 this intervention was withdrawn and Scarfone Hawkins clarified that despite having intervened on behalf of Blackout, the firm does not actually represent Blackout. By way of background, Blackout is a non-Canadian, publicly traded “penny stock” with approximately 81.8 billion shares issued and outstanding and a market capitalization of approximately \$8.2 million¹. The shares are widely held by various shareholders worldwide. The company’s head office is reportedly in Thailand. Blackout owns a 14.8% non-voting interest in TFN

¹ It should be noted that the information relating to the market capitalization of Blackout is unreliable as the stock has been flagged as “caveat emptor” in the U.S. OTC (over the counter) stock market. The Securities and Exchange Commission filed a complaint in the United States District Court for the Southern District of New York against Blackout alleging that Blackout engaged in a scheme to create publicly traded companies through illegal distribution of the securities of more than 50 Blackout subsidiaries. The financial statements for Blackout indicate that the company has not defended this complaint and that the SEC will obtain default judgement.

Global Inc. TFN Global is the parent company of The Fight Network Inc. (“TFN”), the current licensee of the Category B specialty service, The Fight Network.

All of the interventions have a common purpose: requesting that the Commission deny or postpone its determination in the above-noted Application until the Ontario Superior Court of Justice (the “Court”) renders its decision on an application for an interim injunction that has been filed by Blackout and certain minority shareholders of TFN Global (the “Court Applicants”). The Court Applicants seek to prohibit the issuance of the Category B digital specialty licence for The Fight Network to FMI, pending the disposition of the main action filed by the Court Applicants. Contrary to the mischaracterization in the form letter interventions, the main application to the Court is not a class action but a lawsuit brought by disgruntled minority shareholders of TFN Global. The action initially included Blackout as a minority shareholder of Global, although TFN Global has now been advised by Scarfone Hawkins (counsel for the Court Applicants) that it did not have instructions to commence the application on behalf of Blackout and will be discontinuing the action insofar as it relates to Blackout. The Court hearing on the interim injunction application is scheduled for May 4, 2010. The main action has not yet been set down for a hearing date.

At the heart of the Court action is the acquisition of joint effective control of TFN by Edwin Nordholm and Loudon Owen from Michael Garrow, which the Commission approved almost two and a half years ago pursuant to a Letter of Authority issued by the CRTC on November 2, 2007 and reported in Broadcasting Public Notice CRTC 2008-14. Therefore, by asking the Commission to deny or postpone its determination in the current Application, the interveners are effectively asking the Commission to reverse its 2007 determination.

The application filed with the Commission in 2007 was filed on the basis of an agreement between Michael Garrow, Mayhem Media Corp. (a company controlled by Edwin Nordholm and Loudon Owen who also control FMI) and Blackout Communications Inc. (now TFN Global) to amend the ownership and control arrangements of TFN Global. This change in ownership was part of a broad recapitalization of the company which involved the infusion of both debt and equity financing by Nordholm and Owen. As part of the recapitalization, the assets of TFN Global and The Fight Network were used as collateral to secure the financing. All but one of the Court Applicants were shareholders at the time of the recapitalization transaction and they consented to the recapitalization when it took place. The 2007 application was filed with the Commission with the full knowledge and approval of the controlling shareholders of TFN Global. Indeed, Michael Garrow (who is one of the Court Applicants) himself signed as a witness to the application form filed with the Commission in 2007.

Since Mayhem’s acquisition of control, changes have been implemented at TFN in an effort to improve operational results but the cumulative impact of these changes has not been sufficient to enable the licensee to service its debt, nor is there any reasonably foreseeable prospect that TFN will generate sufficient excess cash to repay its debt. As a result, Mayhem has issued notice of its intention to enforce the security for the debt, and intends to foreclose on its collateral in accordance with section 65 of the *Personal Property Security Act* (Ontario). The interveners, including Michael

Garrow and the other Court Applicants, are now trying to prevent Mayhem from realizing on its security as a result of the default on the debt .

In our submission, the issues raised by the interveners are beyond the purview of the Commission and are already the subject matter of an application to the Court. The interventions that have been filed do not raise any objections that relate to the Commission's jurisdiction under the *Broadcasting Act*. Rather, the interveners are attempting to use the Commission's process to gain an advantage in the litigation they have commenced. This is an improper use of the Commission's process and the Commission should recognize it for what it is: a transparent attempt to obtain a *de facto* injunction via the regulatory process. As such, it constitutes an abuse of process.

The Application before the CRTC is compliant with the *Broadcasting Act* and all CRTC rules and regulations. The CRTC is the master of its own jurisdiction. Simply because an application is before the Court does not prevent the CRTC from issuing its determination in the current Application.

No harm would be brought to the interveners if the CRTC approves the Application, since if the interim injunction application is successful, FMI would be enjoined from acting on the Commission's determination in any event. However, the same is not true if the Commission accedes to the requests of the interveners and denies or postpones its determination on the Application.

As the Commission is aware, TFN is in severe financial distress and has been for some time, which is the very reason that led to the restructuring application in 2007 and the current Application. The Fight Network specialty service cannot withstand any further delays in securing stable financing or else the future of the service will be in jeopardy. We will endeavour to keep the Commission apprised of the outcome of both the interim injunction application and the main action and it is possible that the injunction application will be determined before the Commission's scheduled May 10th hearing of this Application. In the interim, we respectfully request that the Commission deny the interveners' request and continue with its processing of the Application.

A copy of this reply has been served on each of the parties on the Intervention Distribution List, in accordance with the *CRTC Rules of Procedure*.

Yours very truly,

Goodmans LLP



Robert Malcolmson

cc: Intervener Distribution List (attached)

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