

FEDERAL COURT

BETWEEN:

HIS HIGHNESS PRINCE KARIM AGA KHAN

Plaintiff

- and -

NAGIB TAJDIN, ALNAZ JIWA, JOHN DOE and DOE CO. and all other persons or entities unknown to the Plaintiff who are reproducing, publishing, promoting and/or authorizing the reproduction and promotion of the Infringing Materials

Defendants

MOTION RECORD OF THE PLAINTIFF
(Plaintiff's Rule 213 Motion for Summary Judgment)

OGILVY RENAULT LLP
Suite 3800
Royal Bank Plaza, South Tower
200 Bay Street
P.O. Box 84
Toronto, Ontario M5J 2Z4

Brian W. Gray
Kristin E. Wall

Tel: (416) 216-4000
Fax: (416) 216-3930

Solicitors for the Plaintiff

TO: THE ADMINISTRATOR
Federal Court

AND TO: NAGIB TAJDIN
37 Sandford Drive
Unit 205a
Stouffville, Ontario, L4A 7X5
nagib@tajdin.com

Tel: (254) 723-693-844
Fax: (905) 640-7533

AND TO: ALNAZ I. JIWA
37 Sandford Drive
Unit 205a
Stouffville, Ontario, L4A 7X5
jiwalaw@yahoo.ca

Tel: (905) 650-3831
Fax: (905) 640-7533

AND TO: JOHN DOE
37 Sandford Drive
Unit 205a
Stouffville, Ontario, L4A 7X5
jiwalaw@yahoo.ca
nagib@tajdin.com

Tel: (905) 650-3831
Fax: (905) 640-7533

AND TO: DOE CO.
37 Sandford Drive
Unit 205a
Stouffville, Ontario, L4A 7X5
jiwalaw@yahoo.ca
nagib@tajdin.com

Tel: (905) 650-3831
Fax: (905) 640-7533

FEDERAL COURT

BETWEEN:

HIS HIGHNESS PRINCE KARIM AGA KHAN

Plaintiff

- and -

NAGIB TAJDIN, ALNAZ JIWA, JOHN DOE and DOE CO. and all other persons or entities unknown to the Plaintiff who are reproducing, publishing, promoting and/or authorizing the reproduction and promotion of the Infringing Materials

Defendants

INDEX

Tab	Document	Page
1.	Notice of Motion dated June 28, 2010	1
2.	Affidavit of Christian Landeta sworn June 28, 2010	
	A. Plaintiff's Statement of Claim, dated April 6, 2010	
	B. Statement of Defence of Nagib Tajdin, dated April 25, 2010	
	C. Statement of Defence of Alnaz I. Jiwa, dated April 28, 2010	
	D. Reply to the Statement of Defence of Alnaz I. Jiwa, dated May 25, 2010	
	E. <u>Amended</u> Reply to the Statement of Defence of Nagib Tajdin, dated June 17, 2010	
	F. E-mail dated May 14, 2010, from Mr. Brian Gray, counsel for the Plaintiff, to the Defendants	

Tab	Document		Page
	G.	Notice of Motion of the Defendant, Nagib Tajdin, dated June 18, 2010	
	H.	Notice of Motion of the Defendant, Alnaz Jiwa, dated June 18, 2010	
	I.	Affidavit of Karim Alibhay, sworn April 28, 2010	
3.	Affidavit of Shafik Sachedina sworn June 25, 2010		
	A.	Print-out of background information on His Highness the Aga Khan retrieved from the AKDN website located at < http://www.akdn.org >	
	B.	ITREB's Farman dissemination policy for Canada	
	C.	Representative copy of a letter from the Ismaili Talika and Religious Education Board (ITREB) at His Highness' Secretariat in Aiglemont dated May 26, 2008	
	D.	Cover, title pages, and table of contents of <i>Farmans 1957-2009 – Golden Edition Kalam-E Imam-E-Zaman</i>	
	E.	Copy of the first announcement by the Ismaili Leader's International Forum and the National Council dated January 16, 2010	
	F.	Letter dated January 4, 2010 from Nagib Tajdin to His Highness the Aga Khan	
	G.	Letter dated January 24, 2010 from His Highness the Aga Khan to Nagib Tajdin	
	H.	E-mail dated January 26, 2010 from Nagib Tajdin to Ms. Michelle Parkes	
	I.	E-mail dated January 28, 2010 from Ms. Michelle Parkes to Nagib Tajdin	
	J.	Letter dated February 18, 2010 from His Highness the Aga Khan to Nagib Tajdin	
	K.	Correspondence dated March 17, 2010 and April 2, 2010, respectively, between Nagib Tajdin and Prince Ameen Aga Khan	
	L.	Copy of the Announcement dated April 15, 2010 by the Ismaili Leaders' International Forum	

4.	Affidavit of Aziz M. Bhaloo, sworn June 23, 2010		
5.	Affidavit of Daniel J. Gleason, Esq., sworn June 1, 2010		
	A.	Executed Affirmation dated May 12, 2010	
6.	Affidavit of Jennifer A. Colman, sworn June 1, 2010		
	A.	Executed Affirmation dated May 12, 2010	
7.	Memorandum of Fact and Law of the Plaintiff dated June 28, 2010		

TAB 1

FEDERAL COURT

BETWEEN:

HIS HIGHNESS PRINCE KARIM AGA KHAN

Plaintiff

- and -

NAGIB TAJDIN, ALNAZ JIWA, JOHN DOE and DOE CO. and all other persons or entities unknown to the Plaintiff who are reproducing, publishing, promoting and/or authorizing the reproduction and promotion of the Infringing Materials

Defendants

PLAINTIFF'S NOTICE OF MOTION
(Plaintiff's Rule 213 Motion for Summary Judgment)

TAKE NOTICE THAT the Plaintiff, His Highness Prince Karim Aga Khan, will make a motion on July 19, 2010, at the Federal Court, 180 Queen Street West, Toronto, Ontario. The estimated duration of the motion is 1.5 hours.

THE MOTION IS FOR:

1. An Order granting the Plaintiff's motion for summary judgment, including:
 - (a) a declaration that:
 - (i) copyright subsists in the Plaintiff's Literary Works; and
 - (ii) the Plaintiff is the owner thereof;

- (b) a declaration that the Defendants have infringed copyright in the Plaintiff's Literary Works;
- (c) a permanent injunction restraining the Defendants, whether acting by their directors, officers, servants, agents, workers or representatives, from infringing the Plaintiff's copyright in the Literary Works;
- (d) an Order requiring the Defendants to deliver up to the Institute of Ismaili Studies in London, U.K., all copies of the Infringing Materials in the Defendants' possession, care or control;
- (e) an Order for a reference for the determination of damages owing to the Plaintiff by reason of the Defendants' infringing activities, with any such damages to be payable to the AKDN Foundation, or such other charitable organization as may be designated by the Plaintiff;
- (f) costs to be fixed in the amount of \$30,000.00 CAD, to be payable to the AKDN Foundation, or such other charitable organization as may be designated by the Plaintiff;
- (g) pre-judgment and post-judgment interest; and
- (h) Such further and other relief as counsel may advise and to this Honourable Court may seem just.

THE GROUNDS FOR THE MOTION ARE:

Overview

1. By this motion, the Plaintiff seeks summary judgment of the Plaintiff's application for copyright infringement in relation to the Defendants' unauthorized reproduction of a book and mp3 audio bookmark entitled "Farmans 1957-2009 – Golden Edition Kalam-E Imam-E Zaman" (the "**Infringing Materials**"). The Infringing Materials reproduce, in

substantial part, a series of original religious addresses and messages (*viz.* Farmans and Talikas), of which the Plaintiff is the sole and original author.

2. A “Farman” is an address by His Highness as Imam to his community. A “Talika” is a brief, written religious message conveyed by His Highness to his community (collectively, the Plaintiff’s “**Literary Works**”).

Background

3. On or about December 2009, the Defendants began publishing, distributing and selling the Infringing Materials. The Plaintiff made immediate and repeated requests to the Defendants to cease all infringing activities, without success.
4. On April 6, 2010, the Plaintiff commenced this action by Statement of Claim for: (i) a declaration that copyright subsists in his Literary Works; (ii) a declaration that the Defendants have infringed the Plaintiff’s copyright in his Literary Works; (iii) injunctive relief; (iv) delivery up; and (v) damages, *inter alia*.
5. Without prejudice, and for the purpose of this motion only, the Plaintiff is not seeking summary judgment with respect to his claim for infringement of moral rights.
6. On April 29, 2010, the Defendants, Alnaz Jiwa and Nagib Tajdin, each served and filed a Statement of Defence. The Plaintiff served and filed Replies on May 25, 2010.
7. On June 21, 2010, the Defendants each served and filed a motion for summary judgment to dismiss this action on the grounds that: (i) the Plaintiff provided consent, express and/or implied to the publication, distribution and sale of the Infringing Materials; and (ii) the Plaintiff did not authorize the commencement of this action.
8. The Defendants’ motions for summary judgment do not contest that copyright subsists in the Plaintiff’s Literary Works. Both Defendants acknowledge that the Plaintiff is the author of the Literary Works.

Plaintiff's Request for Summary Judgment

9. The Plaintiff's motion herein presents an appropriate case for summary judgment as both Defendants admit facts which establish that: (i) the Plaintiff's Literary Works are entitled to copyright and are owned by the Plaintiff; (ii) the Plaintiff is the author of the Literary Works contained in the Infringing Materials; and (iii) the Defendants publish, distribute and/or sell the Infringing Materials.
10. The Defendants' defence is limited to two assertions: (i) their actions are justified since the Plaintiff provided consent, both express and/or implied, to the publication, distribution and sale of the Infringing Materials; and (ii) the Plaintiff did not authorize the commencement of the present action.
11. None of the "consent" defences described by the Defendants are sufficient to meet the standard of "clear" consent required by law in order to operate as a proper defence to copyright infringement. The Defendants' purported "consent" to lawfully publish, distribute and sell the Infringing Materials also concerns an earlier book, which the Defendant, Mr. Tajdin, agreed to stop selling, at the request of the Plaintiff, some 10 years before the release of the Infringing Materials.
12. Moreover, since the launch of the Infringing Materials in December of 2009, the Plaintiff has repeatedly communicated to the Defendants that he does not, and has not ever consented to the unauthorized publication, distribution and sale of his Literary Works. Rather than abide by His Highness' clear instructions, the Defendants unreasonably insist, despite having being presented with irrefutable evidence to the contrary, that this action is not authorized by the Plaintiff.
13. Both defences are without merit and fail to present any genuine issue for trial. The Plaintiff respectfully submits that this motion for summary judgment should be granted accordingly.
14. The Plaintiff relies upon section 11(3) of the *Federal Courts Act*, R.S.C. 1985, c. F-7; Rules 4, 213 to 219, 400, and 401 of the *Federal Courts Rules*, SOR/98-106; sections 3,

5, 13, 27, 34 and 34.1 of the *Copyright Act*, R.S.C. 1985, c. C-42; and Rule 15.02 of the *Ontario Rules of Civil Procedure*, R.R.O. 1990, Reg. 194.

THIS FOLLOWING DOCUMENTARY EVIDENCE WILL BE USED AT THE HEARING OF THE MOTION:

1. The Affidavit of Christian Landeta, sworn June 28, 2010;
2. The Affidavit of Shafik Sachedina, sworn June 25, 2010;
3. The Affidavit of Aziz M. Bhaloo, sworn June 23, 2010;
4. The Affidavit of Daniel J. Gleason, Esq., sworn June 1, 2010;
5. The Affidavit of Jennifer A. Colman, sworn June 1, 2010;
6. The pleadings and proceedings herein; and
7. Such further and other material as counsel may advise and this Honourable Court may permit.

Dated at Toronto, in the Province of Ontario, this 28th day of June, 2010.



OGILVY RENAUULT LLP
Royal Bank Plaza, South Tower
200 Bay Street, Suite 3800
P.O. Box 84
Toronto, Ontario M5J 2Z4
Canada

Brian W. Gray
Kristin E. Wall

Tel: (416) 216-4000
Fax: (416) 216-3930

Solicitors for the Plaintiff

TO: THE ADMINISTRATOR
Federal Court

AND TO: NAGIB TAJDIN
37 Sandford Drive
Unit 205
Stouffville, Ontario, L4A 7X5
nagib@tajdin.com

Tel: (254) 723-693-844
Fax: (905) 640-7533

AND TO: ALNAZ I. JIWA
37 Sandford Drive
Unit 205
Stouffville, Ontario, L4A 7X5
jiwalaw@yahoo.ca

Tel: (905) 650-3831
Fax: (905) 640-7533

AND TO: JOHN DOE
37 Sandford Drive
Unit 205
Stouffville, Ontario, L4A 7X5
jiwalaw@yahoo.ca
nagib@tajdin.com

Tel: (905) 650-3831
Fax: (905) 640-7533

AND TO: DOE CO.
37 Sandford Drive
Unit 205
Stouffville, Ontario, L4A 7X5
jiwalaw@yahoo.ca
nagib@tajdin.com

Tel: (905) 650-3831
Fax: (905) 640-7533

FEDERAL COURT

BETWEEN:

HIS HIGHNESS PRINCE KARIM AGA KHAN

Plaintiff

- and -

**NAGIB TAJDIN, ALNAZ JIWA, JOHN DOE and
DOE CO. and all other persons or entities unknown to
the Plaintiff who are reproducing, publishing,
promoting and/or authorizing the reproduction and
promotion of the Infringing Materials**

Defendants

PLAINTIFF'S NOTICE OF MOTION
(Plaintiff's Rule 213 Motion for Summary Judgment)

OGILVY RENAULT LLP
Royal Bank Plaza, South Tower
200 Bay Street, Suite 3800
P.O. Box 84
Toronto, Ontario M5J 2Z4**Brian W. Gray**
Kristin E. WallTel: (416) 216-4000
Fax: (416) 216-3930**Solicitors for the Plaintiff**

TAB 2

FEDERAL COURT

BETWEEN:

HIS HIGHNESS PRINCE KARIM AGA KHAN

Plaintiff

- and -

NAGIB TAJDIN, ALNAZ JIWA, JOHN DOE and DOE CO. and all other persons or entities unknown to the Plaintiff who are reproducing, publishing, promoting and/or authorizing the reproduction and promotion of the Infringing Materials

Defendants

AFFIDAVIT OF CHRISTIAN LANDETA

(sworn June 28, 2010)

I, Christian Landeta, of the Town of Richmond Hill, in the Province of Ontario, MAKE OATH AND SAY:

1. I am a law clerk in the Intellectual Property Group of Ogilvy Renault LLP, solicitors for the Plaintiff. I am assisting the lawyers with primary responsibility for this file and have personal knowledge of the facts set out in this affidavit.

Pleadings

2. Attached as **Exhibit "A"** to my affidavit is a copy of the Plaintiff's Statement of Claim, dated April 6, 2010.
3. Attached as **Exhibit "B"** to my affidavit is a copy of the Statement of Defence of Nagib Tajdin, dated April 25, 2010.
4. Attached as **Exhibit "C"** to my affidavit is a copy of the Statement of Defence of Alnaz I. Jiwa, dated April 28, 2010.
5. Attached as **Exhibit "D"** to my affidavit is a copy of the Reply to the Statement of Defence of Alnaz I. Jiwa, dated May 25, 2010.

6. Attached as **Exhibit "E"** to my affidavit is a copy of the Amended Reply to the Statement of Defence of Nagib Tajdin, dated June 17, 2010.

Plaintiff's Affirmation

7. Attached as **Exhibit "F"** to my affidavit is a copy of an e-mail dated May 14, 2010, from Mr. Brian Gray, counsel for the Plaintiff, to the Defendants. This e-mail attaches an Affirmation sworn by the Plaintiff on May 12, 2010.

8. On or about June 1, 2010, counsel for the Plaintiff provided the Defendant, Mr. Jiwa, with an original copy of the Affirmation on the undertaking that it be returned within 10 days.

Defendants' Motion for Summary Judgment

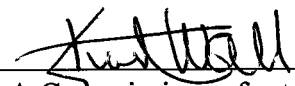
9. Attached as **Exhibit "G"** to my affidavit is a copy of the Notice of Motion of the Defendant, Nagib Tajdin, dated June 18, 2010.


10. Attached as **Exhibit "H"** to my affidavit is a copy of the Notice of Motion of the Defendant, Alnaz Jiwa, dated June 18, 2010.

11. Attached as **Exhibit "I"** to my affidavit is a copy of the Affidavit of Karim Alibhay, sworn April 28, 2010, as contained in the summary judgment motion record of Messrs. Tajdin and Jiwa.

12. I make this affidavit in support of the Plaintiff's motion dated June 28, 2010 for summary judgment and for no other purpose.

SWORN before me at the City of Toronto, on June 28th, 2010.


A Commissioner for taking affidavits


CHRISTIAN LANDETA