

Court File No. T-514-10

FEDERAL COURT

BETWEEN:

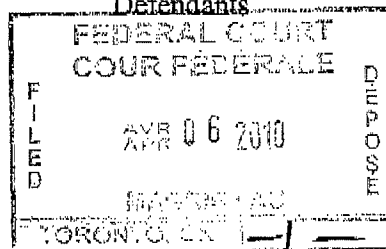
HIS HIGHNESS PRINCE KARIM AGA KHAN

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



STATEMENT OF CLAIM

TO THE DEFENDANTS:

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or a solicitor acting for you are required to prepare a statement of defence in Form 171B prescribed by the *Federal Courts Rules*, serve it on the plaintiffs solicitor or, where the plaintiff does not have a solicitor, serve it on the plaintiff, and file it, with proof of service, at a local office of this Court, WITHIN 30 DAYS after this statement of claim is served on you, if you are served within Canada.

If you are served in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period for serving and filing your statement of defence is sixty days.

Copies of the *Federal Courts Rules*, information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

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IF YOU FAIL TO DEFEND THIS PROCEEDING, judgment may be given against you
in your absence and without further notice to you.

April 6, 2010

MAGGIE LAU
REGISTRY OFFICER
Issued by: AGENT DU GREFFE
Registry Officer

Address of local office: 180 Queen Street West, Suite 200
Toronto, Ontario
M5V 3L6

TO: THE ADMINISTRATOR
Federal Court

AND TO: NAGIB TAJDIN
8462 Mountain Sight
Montreal, Quebec, H4P 2B9 and
P.O. Box 38236-00623, Parklands
Nairobi, Kenya

AND TO: ALNAZ JIWA
Jiwa & Associates
805 Middlefield Road, Unit 215
Scarborough, Ontario, M1V 4Z6

AND TO: JOHN DOE
Jiwa & Associates
805 Middlefield Road, Unit 215
Scarborough, Ontario, M1V 4Z6

8462 Mountain Sight
Montreal, Quebec, H4P 2B9

AND TO: DOE CO.
Jiwa & Associates
805 Middlefield Road, Unit 215
Scarborough, Ontario, M1V 4Z6

8462 Mountain Sight
Montreal, Quebec, H4P 2B9

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CLAIM

1. The Plaintiff His Highness Prince Karim Aga Khan claims:
 - (a) a declaration that:
 - (i) copyright subsists in the Literary Works and Readings (as defined herein); and
 - (ii) the Plaintiff is the owner thereof,
 - (b) a declaration that the Defendants have infringed copyright in the Plaintiff's Literary Works and Readings;
 - (c) a declaration that the Defendants have infringed the Plaintiff's moral rights in the Literary Works and Readings;
 - (d) an interim, interlocutory and permanent injunction to restrain the Defendants, whether acting by their directors, officers, servants, agents, workers or representatives, from infringing the Plaintiff's copyright and/or moral rights in the Literary Works and Readings;
 - (e) an interim, interlocutory and permanent order requiring the Defendants to maintain proper books and records of all revenue of any kind received from the exploitation of, or otherwise in respect of, any copy of the Infringing Material (as defined herein) in Canada; and all records in respect of the printing, publication and distribution of the Infringing Material;
 - (f) an Order requiring the Defendants to deliver up to the Plaintiff or his nominee all copies of the Infringing Material in the Defendants' possession, care or control and all other wares, labels, packages, signage, advertising materials, plates or moulds or other materials or things in the Defendants' power, custody or possession, which refer to all or any part of the Literary Works and Readings;
 - (g) damages for infringement of the Plaintiff's copyright and moral rights;

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- (h) an accounting of all revenues received and profits made by the Defendants from the sale of any and all copies of the Infringing Materials;
- (i) in the alternative, an award of statutory damages in respect of the infringement of the Literary Works and Readings;
- (j) punitive and exemplary damages;
- (k) costs of this action on a solicitor and client basis;
- (l) pre-judgment and post-judgment interest; and
- (m) such further and other relief as to this Honourable Court seems just.

Overview

2. This is a claim for infringement of copyright and moral rights relating to the unauthorized reproduction of the original Literary Works and Readings authored by the Plaintiff, His Highness Prince Karim Aga Khan ("the Aga Khan").
3. The infringing material consists of a book entitled "Farmans 1957-2009 - Golden Edition Kalam-E Imam-E-Zaman" (the "Book"). This Book reproduces in substantial part a series of 589 Farmans and 77 Talikas and messages authored by the Aga Khan and delivered in various countries around the world between the years 1957 to 2009. The Book is accompanied by an mp3 audio bookmark preloaded with 14 audio extracts of Farmans read in the Plaintiff's own voice (the "MP3"). Collectively, the Book and MP3 are referred to herein as the "Infringing Materials".
4. A "Farman" is an address by the Aga Khan as Imam to his community. A "Talika" is brief, written religious message conveyed to his community by the Aga Khan.
5. The Infringing Materials were produced, published, distributed or sold by the Defendants. The Plaintiff, the Aga Khan, has not authorized the production, publication, distribution or sale of the Infringing Materials in Canada or anywhere in the world. In addition because the Aga Khan has not had an opportunity to edit, arrange, select or otherwise control the manner and form of the presentation of his Farmans and Talikas,

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the Infringing Materials infringe on the Plaintiff's moral right to control the integrity of his works.

The Parties

6. The Aga Khan is the 49th hereditary Imam of the Shia Imami Ismaili Muslims. There are Ismaili Muslims living throughout the world, including across Canada.
7. The Plaintiff, the Aga Khan, is a citizen of the United Kingdom and a resident of France.
8. The Defendant, Nagib Tajdin, is an individual residing in Montreal, Quebec and in Nairobi, Kenya. Mr. Tajdin operates a website in Canada which promotes the sale of the Infringing Materials in Canada and throughout the world.
9. The Defendant, Alnaz Jiwa, is an individual and lawyer at Jiwa & Associates located in Scarborough, Ontario. Mr. Jiwa operates a website in Canada which promotes the sale of the Infringing Materials in Canada and throughout the world.
10. The Plaintiff has named as defendants those specific persons that are known to be publishing, reproducing, selling and promoting or authorizing the publication, reproduction, sale and promotion of the Infringing Materials. The Plaintiff, however, is generally aware that other persons and/or companies have also participated in selling, publishing, reproducing and/or promoting the Infringing Materials. These other persons and/or entities have caused damage to the Plaintiff through their publication, sale, reproduction and/or promotion of the Infringing Materials. The specific identify of these unknown persons and/or companies is completely within the knowledge of the named Defendants and are hereafter collectively defined as "John Doe" and "Doe Co."

Background Facts - His Highness Prince Karim Aga Khan

11. At the age of twenty, the Aga Khan succeeded his grandfather, Sir Sultan Mahomed Shah Aga Khan, to become the 49th hereditary Imam (spiritual leader) of the Shia Imami Ismaili Muslims on July 11, 1957. The Aga Khan celebrated the Golden Jubilee of his Imamatus on July 11, 2007.

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12. Ismailis live in over 25 countries across the world, mainly in South and Central Asia, Africa, Afghanistan, Iran and the Middle East, as well as North America and Western Europe. It is the mandate of the Imam to interpret to his community the faith of Islam as a thinking, spiritual faith that teaches compassion and tolerance and upholds the dignity of man, and also to lead the effort to improve the security and quality of life of his community and the wider societies among which the Ismailis live. The Aga Khan's communications to his community are conveyed in this privileged context and, hence, he is concerned that their integrity should be safeguarded.
13. The Aga Khan works extensively to improve conditions internationally in the developing world by leading a number of institutions which collectively constitute the Aga Khan Development Network.

Ownership of the Works

14. The Aga Khan has been since birth a citizen of the United Kingdom. As a result, copyright exists in Canada and all Berne Convention countries worldwide in works authored by the Aga Khan.
15. The unauthorized Farmans and Talikas contained in the Book (the "Literary Works") were authored by the Aga Khan personally. The Aga Khan is the sole author of the Literary Works and, pursuant to section 13(1) of the *Copyright Act*, is the owner of the copyright in the Literary Works.
16. The sound recordings of the Aga Khan delivering Farmans are contained on the MP3 (the "Readings"). The Readings are a copy in substantial part of the Literary Works.
17. Pursuant to section 3 of the *Copyright Act*, the Aga Khan has the sole right to reproduce the Literary Works or the Readings, or any substantial part thereof, in any material form whatever and to authorize any such acts.
18. The Plaintiff pleads and relies upon the presumptions respecting copyright ownership arising from sections 34.1 of the *Copyright Act*.
19. The Aga Khan has not assigned or licensed the Literary Works or Readings to the Defendants.

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20. Pursuant to section 14.1 of the *Copyright Act*, the Aga Khan has the right to the integrity of the Literary Works and Readings. The Aga Khan has not waived any of his moral rights.

Infringement by the Defendants

21. In 1993-1994, the Defendant Nagib Tajdin reproduced, sold and distributed unauthorized copies of the Aga Khan's Farmans and Talikas, without the consent of the Aga Khan. However upon complaint, the Defendant withdrew from further distribution the unauthorized materials.
22. However, on or about December 13, 2009, on the birthday of the Aga Khan, the Defendants produced and released the Infringing Materials consisting of the Book and MP3. The Farman readings contained on the MP3 were delivered by the Aga Khan at Ismaili congregations and recorded by the Defendants without the Aga Khan's knowledge or authorization.
23. The Aga Khan has not been able to verify the verbatim accuracy or authenticity of all of the Infringing Materials. However, such Infringing Materials are a reproduction in substantial part of the Literary Works and Readings. The Aga Khan has not authorized the publication of the Infringing Material. As has been his systematic practice for many years, the Aga Khan often annotates and edits his texts in accordance with established criteria and well established guidelines before any publication of them.
24. The Book indicates that it was printed in Canada. The Book does not identify any publisher of the book.
25. The Defendants promote the Book for sale on their respective websites for \$50.00 CAD a volume, to be purchased in multiples of four volumes. The MP3 is offered as a free gift with each book.
26. The Book and MP3 are composed of the following material (collectively, the "Infringing Materials"):
- (a) reproductions of a substantial part of the Plaintiff's Literary Works described above; and

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- (b) reproductions of a substantial part of the Readings described above.
27. Pursuant to section 27(1) of the *Copyright Act*, it is infringement of copyright for any person to do, without the consent of the owner of the copyright, anything that only the owner of the copyright has the right to do.
28. By reproducing the Infringing Materials, the Defendants have infringed on the Aga Khan's copyright in his Literary Works and Readings.
29. At times and in places in Canada presently unknown to the Plaintiff but known to the Defendants, the Defendants have reproduced, or caused other parties to reproduce, copies of the Book and MP3 which include the Infringing Materials and have thereby infringed the Plaintiff's copyright in the Literary Works and Readings. Such reproductions include prints of the Book that have been distributed for sale on the Internet in Canada, and through agents and other individuals, and copies of the MP3 containing the Readings, as well as promotional and other materials containing all or any part of the Infringing Materials.
30. Pursuant to section 27(2) of the *Copyright Act*, it is infringement of copyright for any person to: (i) sell, (ii) distribute to such an extent as to affect prejudicially the owner of copyright; (iii) by way of trade distribute or offer for sale (iv) possess for the purpose of doing anything referred to in paragraph (i) (ii) and (iii), or (iv) import in Canada for the purposes of doing anything referred to in (i) (ii) or (iii), a copy of a work or sound recording that the person knows or should have known would infringe copyright if it had been made in Canada by the person who made it.
31. At times and in places in Canada presently unknown to the Plaintiff, but known to the Defendants, the Defendants, or their agents or licensees have, without the consent or authorization of the Plaintiff:
- (i) Sold,
 - (ii) distributed to such an extent as to affect prejudicially the Plaintiff,
 - (iii) by way of trade distributed or offered for sale,

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- (iv) possessed for the purpose of doing the things referred to in (i) (ii) and (iii),
and
- (v) imported into Canada for the purpose of doing anything referred to in (i)
(ii) and (iii),

copies of the Infringing Materials.

32. The Defendants at all material times knew, or in the alternative should have known, that copyright subsists in each of the Literary Works and Readings and, that the Plaintiff was and is the owner thereof, and that the Defendants had no rights to all or any part of the Literary Works and Readings without authorization from the Plaintiff.
33. Pursuant to section 28.1 of the *Copyright Act*, any act of omission that is contrary to the moral rights of an author is an infringement of the author's moral rights.
34. In using the Infringing Materials, the Defendants deprived the Plaintiff of the opportunity to review, arrange, edit and publish or not publish his own Literary Works and Readings thereby impairing the integrity of the Plaintiff's work and infringing his moral rights in the Literary Works and Readings.
35. The reproduction, sale, distribution and importation by the Defendants of copies of the Literary Works and Readings containing unauthorized excerpts from the Literary Works and Readings is contrary to the moral rights of the Plaintiff to the integrity of those works.
36. By reason of the infringing acts of the Defendants, the Plaintiff has suffered and will continue to suffer damages.
37. The Defendants have in their possession, care or control in Canada and elsewhere copies of the Infringing Materials and of other materials containing reproductions of Infringing Materials, as well as plates or moulds used or intended to be used for the production of further copies of Infringing Materials. The specific identity and quantity of the Infringing Materials and related plates or moulds is known to the Defendants but unknown to the Plaintiff. Pursuant to section 38 of the *Copyright Act*, all such Infringing Materials, plates or moulds are deemed to be recoverable by the Plaintiff as though they were his property.

38. The Plaintiff proposes that this action be tried at Toronto.

April 6, 2010


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