

DRAFT

No. _____
Victoria Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

DARREN WILLIAMS

PLAINTIFF

AND:

ROGERS COMMUNICATION INC. and APPLE CANADA INC.

DEFENDANTS

WRIT OF SUMMONS

Brought pursuant to the *Class Proceedings Act*, R.S.B.C. 1996, c. 50

Name and Address of each Plaintiff:

Darren Williams
c/o Merchant Law Group LLP
531 Quadra Street
Victoria, B.C. V8V 3S4

Name and Address of each Defendant:

Rogers Communications Inc.
2900-550 Burrard Street
Vancouver B.C. V6C 0A3

Apple Canada Inc.
2900-550 Burrard Street
Vancouver B.C. V6C 0A3

ELIZABETH THE SECOND, by the Grace of God, of the United Kingdom, Canada and Her other Realms and Territories, Queen, Head of the Commonwealth, Defender of the Faith.

To the defendants: Rogers Communications Inc., and Apple Canada Inc.

TAKE NOTICE that this action has been commenced against you by the Plaintiffs for the claim set out in this writ.

IF YOU INTEND TO DEFEND this action, or if you have a set off or counterclaim that you wish to have taken into account at the trial, **YOU MUST**

- (a) **GIVE NOTICE** of your intention by filing a form entitled "Appearance" in the above registry of this court, at the address shown below, within the Time for Appearance provided for below and **YOU MUST ALSO DELIVER** a copy of the Appearance to the Plaintiffs' address for delivery, which is set out in this Writ, and
- (b) if a Statement of Claim is provided with this Writ of Summons or is later served on or delivered to you, **FILE** a Statement of Defence in the above registry of this court within the Time for Defence provided for below and **DELIVER** a copy of the Statement of Defence to the Plaintiffs' address for delivery.

YOU OR YOUR SOLICITOR may file the Appearance and the Statement of Defence. You may obtain a form of Appearance at the registry.

JUDGMENT MAY BE TAKEN AGAINST YOU IF

- (a) **YOU FAIL** to file the Appearance within the Time for Appearance provided for below; or
- (b) **YOU FAIL** to file the Statement of Defence within the Time for Defence provided for below.

TIME FOR APPEARANCE

If this writ is served on a person in British Columbia, the time for appearance by that person is 7 days from the service (not including the day of service).

If this writ is served on a person outside British Columbia, the time for appearance by that person after service, is 21 days in the case of a person residing anywhere within Canada, 28 days in the case of a person residing in the United States of America, and 42 days in the case of a person residing elsewhere.

TIME FOR DEFENCE

A Statement of Defence must be filed and delivered to the Plaintiffs within 14 days after the later of

- (a) the time that the Statement of Claim is served on you (whether with this writ of summons or otherwise) or is delivered to you in accordance with the Rules of Court, and
- (b) the end of the Time for Appearance provided for above.

[or, if the time for defence has been set by order of the court, within that time.]

- (1) The address for the registry is:

Ministry of Attorney General
Court Registry
PO Box 9248 Stn Prov Govt
2nd Floor, 850 Burdett Avenue
Victoria, British Columbia V8W 9J2

- (2) The Plaintiffs' ADDRESS FOR DELIVERY is:

c/o Merchant Law Group LLP
531 Quadra Street
Victoria, British Columbia V8V 3S4
Fax number for delivery (if any): 250-478-9943

- (3) The name and office address of the Plaintiffs' solicitor is:

Darren Williams
Merchant Law Group LLP
531 Quadra Street
Victoria, British Columbia V8V 3S4
Tel: 250-478-9928
Fax: 250-478-9943

The Plaintiffs' claim is:

The Plaintiff, Darren Williams, barrister, is a resident of Victoria, B.C. and has as an address for service the offices at 531 Quadra Street in Victoria B.C. V8V 3S4. The Defendant, Rogers Communications Inc., is a B.C. incorporated company with registered offices at 2900-550 Burrard Street Vancouver B.C. V6C 0A3 (hereafter "Rogers"). The Defendant Apple Canada Inc. is a company incorporated in Ontario with an address for service within B.C. at 2900-550 Burrard Street Vancouver B.C. V6C 0A3 (hereafter "Apple").

The Plaintiff is a consumer of wireless communications hardware and data services. Rogers carries on business in B.C. as a television, telecommunications, internet and wireless services provider. Apple carries on business as, *inter alia*, a wireless computer hardware supplier. At all material times Rogers and Apple acted in concert to promote the sale of their respective services to the Plaintiff and other members of the proposed class.

On May 9, 2010 the Defendants Rogers and Apple expressly advertised, represented and offered through Apple's online store that, upon purchase of an Apple wireless computing hardware device (hereafter referred to as an "iPad 3G") by a purchaser who was already a customer of Rogers with an active wireless data contract, the purchaser's iPad 3G could be connected to their existing Rogers data service contract for a flat fee of \$20 (hereafter the "Offer"). The Plaintiff, viewing and relying on the Offer, purchased two iPad 3G devices from Apple's online store on May 9, 2010. The Plaintiff would not have purchased the iPad 3G devices had the Offer not been made. On May 10, 2010 Rogers alleged that the Offer was erroneous and that Rogers would not honour the Offer, consequently indicating the Plaintiff would be required to obtain a new and separate contract for supply of data to the iPad 3G devices at an additional expense:

At all material times the Offer was a valid contractual offer made by Rogers, which the Plaintiff accepted and provided consideration for in the purchase of the iPad 3G devices, and for which Rogers is lawfully bound to provide specific performance of. Alternatively, the Plaintiff claims for damages arising from Rogers' breach of contract of the Offer. In the further alternative, the Offer was a negligent misrepresentation by Rogers, or alternatively Apple, which the Defendants each owed a duty to avoid making, and were reasonably aware would be relied on when posted on Apple's online store as part of Rogers' and Apple's efforts to sell their respective products. The representation, being the Offer, was false by Rogers' own admission, and the Plaintiff relied on it to his detriment, for which detriment the Defendant's are jointly and severally liable.

Wherefore the Plaintiff claims against Rogers for specific performance or alternatively breach of contract, or in the further alternative, jointly and severally against Rogers and Apple for damages arising from their negligent misrepresentation, as well as legal costs, interest, and such other relief as this Honourable Court deems just.

Dated: May 13, 2010

the Plaintiff

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**Merchant Law Group LLP
Barristers and Solicitors
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Victoria, BC V8V 3S4
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Telephone: 250-478-9928
Court Box 138**