

Copyright Board
Canada



Commission du droit d'auteur
Canada

[CB-CDA 2024-068]

RULING OF THE BOARD

Matter: 71-2023-01 Totem Médias Inc. v CONNECT Music Licensing Service Inc.

August 23, 2024

I. OVERVIEW

[1] This Ruling addresses three deficiencies motions filed by CONNECT on August 7, 2024 in relation to Totem's responses to interrogatories filed on July 22, 2024.

[2] The motions are granted, in part, as detailed in Annex A.

II. NEXT STEPS

[3] As per Ruling 2024-049, Totem is to file its final responses to interrogatory questions by **Wednesday, September 11, 2024.**

Luc Martineau
Chair, Copyright Board

ANNEX A: RULINGS ON INTERROGATORIES

MOTION 1	
Interrogatory Question	Provide corporate organization charts for Totem and Newmood, or if unavailable, provide detailed information on Totem’s corporate structure and relationship to Newmood.
CONNECT’s Motion	<p>Totem’s answer is incomplete. The interrogatory requires “detailed information on Totem’s corporate structure and relationship to Newmood” but Totem has provided no information about how they are affiliated, including whether there is a parent/subsidiary relationship, and whether the entities are under common ownership.</p> <p>Totem also states that Pier-Luc Pothier is a salaried employee of Newmood and Totem pays a subcontracting fee to Newmood for the work he does for Totem. However, Totem has not described the nature of that work. The obligation to provide that information is inherent in the requirement to provide detailed information about Totem’s relationship to Newmood.</p>
Totem’s Response to Motion	<p>Totem is owned 50/50 by Bruno Fréchette and Pierre Pothier, and Newmood is similarly, but separately, owned 50/50 by the same two men. There are no shares in either company. They are simply two separate companies owned by the same two individuals.</p> <p>Totem submits that the nature of Mr. Pothier’s employment is in no way relevant to any issue related to the fair and equitable value of the rights being granted by Connect. However, if required by the Board, Totem can provide further specifics.</p>
Ruling	<p>Motion denied.</p> <p>Totem has addressed the first deficiency claim in this motion; and I agree that detailed information about Mr. Pothier’s work is not required, given the interrogatory question.</p>

MOTION 2	
Interrogatory Question	<p>Totem will provide any contracts, agreements, or documentation detailing the business relationship between Totem and Newmood during the period of 2022 to 2024.</p> <p>For certainty, this includes documents created prior to this period. If the number of responding documents are too numerous (e.g., if a</p>

	<p>separate agreement exists for each customer), Totem will provide a sample of 10 such documents.</p>
CONNECT's Motion	<p>Totem's answer is incomplete. The interrogatory is not limited to written agreements. Totem is required to provide agreements detailing its business relationship with Newmood. If the only agreement is verbal, then Totem ought to provide a detailed summary of its financial and other terms including when the agreement was reached and the obligation of the parties to one another. Additionally, in the absence of a written agreement with signatories, Totem should indicate who entered into the agreement on behalf of each of Totem and Newmood.</p> <p>The interrogatory also requires Totem to provide any documentation detailing its business relationship with Newmood. That would include any email correspondence that discusses the arrangement, including any discussion of the parties' performance of their respective obligations. If any such correspondence exists, it should be produced.</p>
Totem's Response to Motion	<p>The type of documentation requested by CONNECT does not exist. Totem and Newmood are small companies owned by the same two individuals. The relationship between the two companies has already been explained at length in Bruno Fréchette's Witness Statement.</p> <p>The Board has already rejected CONNECT's previously submitted interrogatory questions that asked for extensive and extraneous financial information beyond what has already been provided for Question 4.</p>
Ruling	<p>Motion granted in part.</p> <p>Totem shall provide a summary of the financial and other terms of the agreement between it and Newmood. This will include the date or dates on which the agreement was reached. Such a summary need not exceed 250 words.</p> <p>Totem's and Newmood's communications regarding the performance of obligations under the agreement are not required.</p>

MOTION 3	
Interrogatory Question	<p>To the extent that previously-filed evidence (including the Fréchette Supplementary Witness Statement) has not responded to this question, Totem shall provide:</p> <ul style="list-style-type: none">- details of the kinds of services offered by Totem and Newmood to customers; and- prices or the amounts paid for these services <p>If responding documents are not readily available, Totem shall provide a response that need not exceed 250 words.</p>
CONNECT's Motion	<p>Totem's answer is incomplete. The interrogatory requires Totem to provide "responding documents". Totem has not provided any documents in response to the interrogatory. It seems implausible that Totem has no responsive documents. At minimum, Totem must have, and should produce, agreements with customers for the services that Totem and Newmood provide.</p> <p>In its response, Totem states that Newmood offers a digital content creation service at an "additional cost". However, it does not detail the prices or amounts paid for that service, as required by the interrogatory.</p> <p>Totem has identified that Newmood charges a \$99.00 installation fee for its background music system, and that its services occasionally share the same system. If Totem or Newmood also charges an installation fee when it is only installing a system for digital signage or on-hold messaging, without background music, it should indicate the amounts charged for those installations.</p>
Totem's Response to Motion	<p>The burden of a response to this stated deficiency is disproportionate to the probative value of the information. With no prejudice to that position, Totem can provide examples of each of the four types of service agreements offered by Newmood.</p> <p>Totem can also provide further explanation of the nature of and costs associated with its digital content creation service and its installation fee.</p>
Ruling	<p>The motion is granted, with directions as follows.</p> <p>I agree that Totem supplying examples of each of the four types of service agreements offered by Newmood would be proportionate and sufficiently responsive. It shall do so.</p>

	<p>Totem shall describe the pricing of the digital content creation service provided by Newmood. Totem shall also indicate the amount or amounts charged by Newmood when installing a system without background music. The response to this portion of the question need not exceed 250 words.</p>
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