



April 18, 2017

[CB-CDA 2017-028]

File: Re:Sound Tariff 6.B – Use of Recorded Music in Fitness Venues, 2013, 2014-2017

ORDER OF THE BOARD

Attention: Re:Sound, Canadian Dance Teachers' Association – Alberta Branch, and Life Time Fitness Inc.

On July 10, 2015, the Board received from Re:Sound the attached request for certification of Tariff 6.B (2013-2017), pursuant to a settlement (the "Settlement Tariff") with Goodlife Fitness Centres Inc., the Fitness Council of Canada, Zoom Media, and Mood Media Corporation, four of the six objectors.

As a result, only the following entities remain as objectors (the "Remaining Objectors"):
Canadian Dance Teachers' Association – Alberta Branch, and Life Time Fitness Inc.

Furthermore, the Settlement Tariff includes provisions, which were not originally published in the *Canada Gazette*, and may adversely affect the interests of the background music supply industry.

Accordingly, the Board orders as follows:

The Remaining Objectors

- (i) The Remaining Objectors shall inform the Board as to whether they agree with the attached Settlement Tariff;
- (ii) Should they not agree, the Remaining Objectors shall provide the Board with written detailed grounds for such objections, including in relation to the attached request for certification;
- (iii) The Board intends to proceed on the basis of written representations;
- (iv) After the deadline set below for providing their written representations, the Remaining Objectors who have not file their written representations will be deemed to have withdrawn their objections to proposed Tariffs 6.B for 2013-2017;

Re:Sound

- (v) Re:Sound shall indicate to the Board whether background music suppliers other than those which are party to the Settlement Tariff were consulted in regards to it and if not, why not;
- (vi) Re:Sound shall also provide the Board with explanations as to why the interests of non-represented members of the background music supply industry would not be adversely affected by the Settlement Tariff, particularly in light of subsection 4(1), which provides the following:

4. The royalties payable to Re:Sound for the use of recorded music in all areas within a fitness venue other than during a fitness class or dance class, including in connection with weight training, cardiovascular training, circuit training and other fitness activities, as well as in change rooms, hallways, offices and lobby areas, are determined as follows:

(1) if recorded music is provided by a background music supplier, notwithstanding subsection 3(2) of the NRCC Background Music Tariff, 2003-2009, the royalties payable and the supplier's reporting requirements and payment deadlines are determined pursuant to Re:Sound Tariff 3.A (Background Music Suppliers). Notwithstanding subsection 4(3) of Re:Sound Tariff 3.A (Background Music Suppliers), a background music supplier who authorizes a subscriber to perform in public recorded music in the repertoire of Re:Sound in a fitness venue, skating venue, or to accompany a fitness activity, is not required to pay the royalties set out in subsection 4(2) of Tariff 3.A to the extent that the subscriber complies with the Re:Sound Fitness Tariff, 2013-2017.

- (vii) Re:Sound shall provide the Board with details – such as market and market-share descriptions – supporting their statement that “Zoom Media Inc. and Mood Media Corporation represent two major background music suppliers that supply recorded music to fitness venues” (p. 2 of Re:Sound's letter);
- (viii) Re:Sound shall also provide the rationale of subsection 4(1) of the Settlement Tariff, including its intended effect, the identity of the payor under 4(1), and its interrelationship with Tariff 3.A (Background Music Suppliers), such as for example whether 3.A may be contingent on 6.B compliance and whether 6.B, in effect, modifies the scope of Tariff 3.A;
- (ix) Finally, Re:Sound may consider proposing a revised subsection 4(1), avoiding potential circularity and overlap between Tariffs 3.A and 6.B;

Deadlines

- (x) The Remaining Objectors and Re:Sound shall provide the Board and serve the Parties with their written representations, if any, by no later than **Tuesday, April 25, 2017**;

(xi) Parties may reply by no later than **Friday, April 28, 2017**.

A handwritten signature in black ink, appearing to read "Gilles McDougall". The signature is fluid and cursive, with the first name being the most prominent.

Gilles McDougall
Secretary General