



Questions for Canadian Club Owners

Please answer the following questions and return by **September 15th 2009** to:

Fitness Industry Council of Canada
13543 St. Albert Trail, 2nd Floor
Edmonton, Alberta T5L 5E7
Fax: (877) 504 - 2033 **Email:** bjilbank@ficdn.ca

The following questions (and directions) were posed by the NRCC to fitness venues in Canada and as such FIC is responsible for forwarding these questions to you to elicit your response. The questions requiring your participation have been reproduced here.

NRCC Directions:

While all of these interrogatories are directed to FIC, some will require the preparation of a response by both FIC and its member fitness venues, while others will require the preparation of an answer by member fitness venues. For greater clarity Part A contains those questions likely to require a response by FIC while Part B contains questions likely to require preparation of a response by fitness venue member and FIC. To the extent that FIC may be authorized to represent the interests of, and to act on behalf of non-member fitness venues in this proceeding, NRCC requires that each such non-member respond to these interrogatories as if it were a member.

NRCC recognizes that FIC may wish to claim confidentiality on behalf of its members for some of the information requested, and will not oppose any reasonable requests for such treatment. Where confidentiality is claimed in any response, please explain why the information or document is confidential and clearly indicate which part of the information or document is confidential.

Where the respondent asserts that the information is not available in the format requested, please provide the next best information that is available, with a description of the major differences in format. Where information is not available for the full period for which it is requested, please provide as much information as is available.

Part B: Questions for FIC and the fitness venues it represents

The following interrogatories request information concerning each of the individual fitness venues represented by FIC. Where two or more fitness venues are under common ownership, the response for each venue may be provided by the common owner. If a response is provided for a group of fitness venues that are under common ownership and the answer given applies to all fitness venues in the group, only a single response is required. However, where there are differences among the fitness venues in an ownership group, a response is required from each venue. FIC is required to pass on to NRCC the responses in the form in which the individual fitness venue or group of fitness venues provides them to FIC.

In the event that any of the information requested pursuant to the following interrogatories are under the possession, power or control of FIC, FIC shall also provide the information in response to the interrogatory.

Fitness Facilities

11. Describe the fitness facilities made available to members of, or to others who are permitted access to, the fitness venue including the number and type of fitness machines available (e.g. 10 treadmills, 3 rowing machines, etc.), the availability of weights (e.g. a range of free weights made available in an area of the venue dedicated to the use of free weights), specialized fitness facilities (e.g. one swimming pool, 3 bowling alleys, etc.) and the number and nature of group fitness classes available per week (e.g. 40 group fitness classes consisting of 25 group cardio classes and 15 group stretching classes).

12. What is the square footage of the fitness venue?
13. Identify by name and address all other fitness venues under common ownership with the fitness venue and provide the name and address of the common owner.
14. Provide the average number of individuals attending each category of group fitness classes (e.g. average of 20 people per group cardio class and 10 people per group stretching class) and the average number of individuals using facilities other than group exercise classes such as fitness machines or free weights per day.
15. Provide the average number of visits by individuals to the fitness venue per week.
16. Describe the means by which the fitness venue tracks attendance of individuals at the fitness venue and in each group fitness class.
17. Produce copies of all schedules of fitness classes offered at the fitness venue during the period January 1, 2009 through to June 30, 2009.
18. Produce copies of all documents that describe the fitness facilities at the fitness venue including orientation packages which were made available to members of the fitness venues or to the public during the period January 1, 2009 to June 30, 2009.
19. If the fitness venue is a franchisee, produce copies of all documents provided to the venue by the franchisor that describe the venue's facilities or that refer to the use of music.
20. Produce copies of representative advertisements for the fitness venue placed during 2009.

Membership

21. Provide the number of members of the fitness venue as at the end of the month for each month during the last fiscal year and as at the end of the two preceding fiscal years.
22. Describe the membership categories available for membership in the fitness venue, including the fee for each category, the services made available for each membership category without additional fee, and the term of membership.
23. Describe the fees payable, in addition to membership fees, for the use of services made available by the fitness venue (e.g. cost for towel service, tanning service, premium group classes, personal training, etc.).
24. Describe all initiation and termination fees for membership in the fitness venue, including the circumstances, if any, in which those fees are waived and the percentage of the membership fees for which those fees are waived.
25. Describe the fees charged by the fitness venue to an individual who is not a member to use the facilities available at the venue (e.g. \$10 per visit by a non-member or \$100 for a book of 10 tickets for the use of the fitness classes valid for three months from the date of purchase, etc.).
26. Provide the demographics of the members of the fitness venue tracked by whatever categories are tracked by the venue (e.g. the ratio of male to female members and age category, e.g. 50 percent 18-35 years old, 35 percent 35-50 years old, and 15 percent over 50 years old, etc.).
27. Provide the percentage of members who use group cardio classes, group stretching classes, fitness machines or free weights (and other facilities, e.g. swimming pool, etc.) at the fitness venue.
28. Provide the ratio of male to female attendees, and age categories, if tracked by the fitness venue, of: (a) group cardio classes, (b) group stretching classes and (c) the other facilities such as fitness machines or free weights at the fitness venue.

Financial Information

29. Produce copies of the audited financial statements for each of the last three fiscal years.
30. For those fitness venues under common ownership with other fitness venues, describe how overhead costs of the common owner are allocated to the fitness venue (e.g. what costs are allocated to the venue and why the costs are allocated in that manner).
31. Identify which costs of the fitness venue are variable and which costs are fixed, quantify those costs for each of the last three fiscal years, and identify what the actual marginal cost that would be incurred by the fitness venue would be to acquire an additional member.
32. For each of the last three fiscal years, identify the amount of the fees paid by the fitness venue to each of SOCAN and AVLA-Audio Visual Licensing Agency for, respectively, the public performance of musical works and the reproduction of musical works.
33. If not specified in the financial statements requested pursuant to interrogatory 29, identify all revenue of the fitness venue broken down by category as tracked by the venue (e.g. membership fees, laundry services, additional group fitness classes, sale of merchandise, sale of food and beverages, personal training, etc.).

Use of Recorded Music

34. Describe the locations in the fitness venue in which recorded music is performed (e.g. the rooms for group cardio classes, the rooms for group stretching classes, the weight room, the exercise machine areas, lobby, change rooms, etc.).
35. Identify the source of supply of the recorded music performed in each location identified in response to interrogatory 34 (e.g. CD or electronic files supplied by the class instructor, CD or electronic files sourced by the fitness venue and supplied to the class instructor, AM or FM radio, satellite radio, music supplier (e.g. DMX), CD or electronic files selected by the fitness venue staff, television, etc.).
36. For the supply of recorded music through CD and electronic files identified in response to interrogatory 35, identify whether the CD or electronic file was available for purchase by the general public, whether the CD or electronic file contains a compilation of recorded music made by or for the class instructor or fitness venue, or whether the CD or electronic file was made available by a fitness music label.
37. With respect to CD or electronic files supplied by the class instructor, who supplies the sound system (e.g. the fitness venue or the class instructor)?
38. Identify the percentage of group fitness classes offered each week during which recorded music is performed (e.g. 100 per cent for group cardio classes, 90 per cent for group stretching classes).
39. With respect to CD or electronic files supplied by fitness music labels, identify the principal fitness music labels used by the fitness venue (e.g. Les Mills International, BurnTrax Fitness Music, etc.).
40. Describe what records are compiled and maintained by the fitness venue of the sound recordings performed: (a) during group fitness classes, and (b) in rooms or areas of the fitness venue where other activity is undertaken.
41. Are class instructors required to play in group fitness classes only the recorded music specified to the instructors by the fitness venue?
42. Do class instructors play in group fitness classes recorded music requested by members of the fitness venue?

NRCC Repertoire

43. For the week of June 15, 2009 to June 21, 2009 inclusive, or for such other week prior to July 10, 2009 as NRCC and the fitness venue may agree upon, provide a log of all sound recordings performed during all group fitness classes and all sound recordings supplied by the fitness venue that were otherwise performed in the venue during that week. The log should identify, for each recording, the title of the musical work, the name of the author and composer of the work, the name of the performer or of the performing group, the title of the record album, the record label, the Universal Product Code (UPC), the International Standard Recording Code (ISRC) and the duration of the sound recording.
44. In the event that the fitness venue is not able to provide the log of sound recordings required in answer to interrogatory 43 provide a certificate of an officer of the fitness venue stating that that is the case, and, for the week of September 14, 2009 to September 20, 2009 inclusive or such other week as NRCC and the fitness venue may agree upon, provide a log of all sound recordings performed during all group fitness classes and all sound recordings supplied by the fitness venue that were otherwise performed in the fitness venue during that week. The log should identify, for each recording, the information required in response to interrogatory 43.
45. Produce a copy of all schedules of fitness classes offered at the fitness venue during the week referred to in interrogatory 44.

Reports

46. Produce copies of all documents under the power, possession or control of the fitness venue that are referred to interrogatory 10. (reproduced here for reference)
 10. *Produce all documents under the power, possession or control of FIC, including those prepared by or for third parties including the International Health, Racquet & Sportsclub Association (IHRSA), that address, in whole or in part,:*
 11. *The size of the fitness industry in Canada calculated by either number of fitness venues, industry revenue or any other means;*
 12. *The membership of fitness venues in Canada;*
 13. *The demographics of members of fitness venues in Canada including any statistics on the percentage of the Canadian population who are members of fitness venues;*
 14. *The fees charged by fitness venues in Canada;*
 15. *The preferences of members of fitness venues for fitness equipment, group fitness classes and other services offered by fitness venues;*
 16. *The extent of competition among fitness venues in Canada;*
 17. *The scope of services offered by fitness venues in Canada;*
 18. *The use of music by fitness venues in Canada;*
 19. *The benefit for fitness venues and to members of fitness venues of the use of music by fitness venues in Canada;*
 20. *The availability of fitness label recordings (e.g. Les Mills International, BurnTrax Fitness Music, etc.) and compilations of original published recordings of performances of musical works to the fitness industry in Canada;*
 21. *The profitability or the financial stability of the fitness industry in Canada;*
and

22. *Projections of the future profitability or the financial performance of the fitness industry in Canada.*

Heenan Blaikie

BY EMAIL

September 25, 2009

The Secretary General
Copyright Board of Canada
Suite 800, 56 Sparks Street
Ottawa, Ontario
K1A 0C9

Attention: Ms. Lise St-Cyr
Senior Clerk of the Board

Dear Ms. St-Cyr:

**Re: Confidentiality Order - NRCC Tariff 6
(Use of Music to Accompany Dance and Fitness) 2008-2012**

Of Counsel

The Right Honourable Pierre Elliott Trudeau, P.C., C.C., C.H., Q.C., FRSC (1984 - 2000)
The Right Honourable Jean Chrétien, P.C., C.C., Q.C.
The Honourable Donald J. Johnston, P.C., O.C., Q.C.
Pierre Marc Johnson, G.O.Q., FRSC
The Honourable Michel Bastarache
The Honourable René Dussault, FRSC
The Honourable John W. Morden
Peter M. Blaikie, Q.C.
André Bureau, O.C.

Andrea Rush

T 416 360.3541
F 1 866 781.1353
arush@heenan.ca

Bay Adelaide Centre
333 Bay Street, Suite 2900
P.O. Box 2900
Toronto, Ontario
Canada M5H 2T4
heenanblaikie.com

This request for directions pertaining to disclosure of highly sensitive confidential information (Highly Confidential Information) is made pursuant to Section 15 of the Board Order issued recently in these proceedings. Counsel for NRCC and Goodlife have agreed submit to the Board for consideration the following protocol with respect to use and preservation of the confidentiality of such information, by way of supplement to the Board order. The wording of the Protocol refers to the defined terms as used in the Board order.

Proposed Protocol

Any information / materials characterized by a Supplier as "Highly Confidential Information" will be marked as such, and released only to the Board and to NRCC (external and internal) counsel who have executed a confidentiality agreement ("Authorized Persons") and to no other person. No copies shall be made by or under the direction of any persons other than Authorized Persons.

The Highly Confidential Information shall be highlighted in blue or printed on blue paper and shall be delivered and retained by the Authorized Person in a sealed envelope. Without limitation, there shall be no disclosure of such Highly Confidential information to any person other than an Authorized Person, without prior written authorization of the Supplier or order of the Board.

The sealed envelope will only be opened and viewed by an Authorized Person or the Board and by no other person (i.e. anyone including experts who are not Authorized Persons).

Once an Authorized Person has opened a sealed envelope and reviewed the contents of the envelope, the Highly Confidential Information is then to be returned to the envelope and retained in the sealed envelope, which will be resealed, where it will be retained throughout the proceedings.

Once the proceedings are terminated for any reason, all sealed envelope(s) should be returned to the Supplier.

Yours truly,

Heenan Blaikie LLP



Andrea Rush, LL.M.

Partner, Registered Patent and Trade-mark Agent

Avocate, agente de brevets et de marques de commerce

Certified by the Law Society of Upper Canada as a
Specialist in Intellectual Property Trade-marks and Copyright

AFR/kd

cc. Sundeep Chauhan and Melanie Hubbard (NRCC) (by email)
Glen Bloom (by email)
Henry Berg (by email)