

File No. CT-2016-

COMPETITION TRIBUNAL

IN THE MATTER OF the *Competition Act*, R.S.C. 1985, c. C-34 (the “**Act**”);

AND IN THE MATTER OF an application by CarGurus, Inc. for an order pursuant to section 103.1 of the Act granting leave to bring an application under sections 75, 76, and 77 of the Act;

AND IN THE MATTER OF an application by CarGurus, Inc. for an order pursuant to sections 75, 76, and 77 of the Act;

BETWEEN:**CARGURUS, INC.**

Applicant

- and -

TRADER CORPORATION

Respondent

COMPETITION TRIBUNAL TRIBUNAL DE LA CONCURRENCE FILED / PRODUIT April 15, 2016 CT-2016-003 Jos LaRose for / pour REGISTRAR / REGISTRAIRE	
OTTAWA, ONT	# 8

AFFIDAVIT OF MARTHA BLUE

(Sworn April 14, 2016)

WEIRFOULDS LLP

Barristers & Solicitors
 4100 - 66 Wellington Street West
 P.O. Box 35, Toronto-Dominion Centre
 Toronto, ON M5K 1B7

Nikiforos Iatrou**Bronwyn Roe**

Tel: 416-365-1110

Fax: 416-365-1876

niatrou@weirfoulds.com

broe@weirfoulds.com

Lawyers for the Applicant

**TO: The Registrar
Competition Tribunal**
90 Sparks Street, Suite 600
Ottawa, ON K1P 5B4

Tel: 613-957-7851
Fax: 613-952-1123
filing.depot@ct-tc.gc.ca

AND TO: John Pecman, Commissioner of Competition
Competition Bureau
50 Victoria Street
Gatineau, QC K1A 0C9

Tel: 819-997-4282
Fax: 819-997-0324

AND TO: GOODMANS LLP
Bay Adelaide Centre
333 Bay Street, Suite 3400
Toronto, ON M5H 2S7

**Peter Ruby
Michael Koch
Hannah Arthurs**

Tel: 416-979-2211
Fax: 416-979-1234

pruby@goodmans.ca
mkoch@goodmans.ca
harthurs@goodmans.ca

Lawyers for the Respondent

I, **MARTHA BLUE**, of the City of Cambridge, in the State of Massachusetts, hereby
MAKE OATH AND SAY:

1. I am the Senior Vice-President Business Development for the Applicant, CarGurus, Inc. (“**CarGurus**”). I have held this position since November 1, 2015, and joined CarGurus in 2011. I have personal knowledge of the matters contained in this affidavit, except where I have indicated that my knowledge is based on information from others, in which case I believe that information to be true. In preparing this affidavit, I have consulted the business records of CarGurus, including emails received by its employees. Where I have referred to such emails, I indicate the name of the CarGurus employee who received the email and the sender. I have also reviewed the Notice of Application of Trader Corporation (“**Trader**”) in the Ontario Superior Court of Justice (Court File No. CV-15-11232-00CL) (“**Trader Application**”), attached as **Exhibit “1”**; the affidavits of the Trader employees filed in the Trader Application that are identified in my affidavits; and the affidavit of Oliver Chrzan, CarGurus’ Senior Vice President Engineering, filed in the Trader Application.
2. In the context of the Trader Application, I executed an affidavit dated March 3, 2016, a copy of which is attached as **Exhibit “2”** (“**First Affidavit**”). I adopt the evidence in the First Affidavit for this application. What follows is additional supplementary evidence for this application. The headings and defined terms in the First Affidavit are adopted and repeated below. The paragraphs under each heading in this affidavit are intended to supplement those under the same heading in the First Affidavit.
3. The following affidavits have been filed in the Trader Application and are referred to in the First Affidavit (with the exception of those affidavits filed in Reply, which are referred

to in this affidavit). I attach copies of the Trader Application affidavits hereto as the following exhibits:

- (a) The affidavit (including Exhibit "E") of Roger Dunbar, Trader's Vice President of Marketing, is attached as **Exhibit "3"** ("**Dunbar Affidavit**");
- (b) The affidavit (excluding exhibits) of Lucian Neacsu, Trader's Director of Operations, is attached as **Exhibit "4"**;
- (c) The affidavit (excluding exhibits) of Allen Wales, Trader's Vice President of Technology, is attached as **Exhibit "5"**;
- (d) The affidavit of Oliver Chrzan, CarGurus' Senior Vice President Engineering, is attached as **Exhibit "6"**; and
- (e) The affidavit (including Exhibits "A" and "C") of Roger Dunbar filed in Reply is attached as **Exhibit "7"** ("**Dunbar Reply Affidavit**");
- (f) The affidavit (excluding appendices) of D'Arcy Woodburn-Davis, Trader's digital forensics expert, filed in Reply, is attached as **Exhibit "8"** ("**Woodburn-Davis Reply Affidavit**").

Digital Marketing of Automobiles

4. In the First Affidavit, I describe the digital marketing of automobiles at paragraphs 7-21. Consumers use Digital Marketplaces to acquire information about vehicle availability, features and prices, quickly and at a low (or no) cost.
5. Digital Marketplaces are a two-sided platform, in that they connect two distinct groups of users: sellers of vehicles and potential buyers of vehicles. Each group benefits from an increase in the size of the group on the other side of the platform.
6. When researching online, consumers want information tailored to their needs while looking for a new or used automobile, and use online channels to narrow their search. At the same time, they expect that when using a given Digital Marketplace, they will have access to as much vehicle inventory as is available in the market, so that they conduct accurate, comparative research. Consumers have come to expect this, based on their

experiences using Digital Marketplaces for travel, real estate and other purchases. If a consumer thinks that a Digital Marketplace only lists a fraction of available inventory, he or she is more likely to use another, more comprehensive, alternative.

7. In addition to the online sources of information described in the First Affidavit, there are other “offline” means to make consumers aware of vehicle pricing and availability, such as TV and newspaper advertising. However, these, are not comparable to, nor a substitute for, online resources, given the limitations of such traditional media. While some consumers may also use such media to inform themselves, increasingly, they are relying on online sources of information.

Business of CarGurus

8. In the First Affidavit, I described the business of CarGurus at paragraphs 22-28. Reference was made to crawling dealer websites for additional Vehicle Listings to populate both its U.S. and Canadian sites. As of the date of this affidavit, CarGurus no longer crawls websites to aggregate Vehicle Listings.
9. Unlike some Feed Providers who take photographs of vehicle inventory for dealers, CarGurus does not offer such services.
10. For clarification, CarGurus defines “**leads**” as inquiries from consumers to specific dealers about specific Vehicle Listings, containing the consumer’s name and basic contact information.
11. With respect to CarGurus’ IMV feature, unlike other Digital Marketplaces, including Trader’s, CarGurus automates and embeds this feature into the CarGurus Website. This allows IMV results to populate instantaneously and without additional input from the consumer.

12. Notably, in response to CarGurus' innovative Price Drop Feature, Trader began offering a similar service in September 2015.
13. As of March 2016, CarGurus operates the largest Digital Marketplace in the U.S. by average daily unique visitors. By driving traffic to our website, we in turn, drive more consumers to dealers.

CarGurus' Launch in Canada

14. Feed Providers have an interest in having their syndicated Vehicle Listings appear on as many Digital Marketplaces as possible. As such, subject to one exception in Canada, CarGurus does not pay Feed Providers for data feeds.
15. As described in my First Affidavit at paragraphs 40-41, at the time of launch CarGurus obtained some Vehicle Listings by crawling dealer websites. The intended benefit for dealers was clear: as in the U.S., this would generate greater publicity for Vehicle Listings, increasing the number of leads, all at no cost to dealers. Of course, if for whatever reason, a dealer wanted CarGurus to take down its listings, CarGurus would implement a dealer block.
16. CarGurus is unaware of anyone other than Trader in Canada who seeks to assert copyright over photographs they have been asked by a dealer to take.
17. Trader has also referenced 72,882 "new" photographs that it alleges have been infringed by CarGurus in the Woodburn-Davis Reply Affidavit in the Trader Application. If the Trader Application is amended to claim infringement of these photographs as well, Trader's damages claim will exceed \$100 million.

18. For the reasons described at paragraphs 141-144 of the First Affidavit, I doubt that there is any copyright in the photographs at issue in the Trader Application.
19. I believe that Trader's copyright litigation is an attempt to litigate CarGurus out of the market.

CarGurus' Revenue Model

20. One major difference between Trader and CarGurus is that CarGurus' business model contemplates offering free (i.e., no cost) listing services to dealers, whereas Trader operates on a higher-cost subscription model. Further, Trader's subscription model bundles various services, making it difficult to discern exactly what Trader charges for leads to dealers. CarGurus' simple, low-cost model made it a very successful competitor against AutoTrader in the U.S., and it is clear that Trader is trying to keep this low-cost model from flourishing in Canada.
21. As described in the First Affidavit at paragraphs 55-57, CarGurus uses leads to demonstrate the value of having Vehicle Listings on the CarGurus Website.
22. CarGurus does not charge dealers for leads sent to them. Instead, it uses them to encourage dealers to purchase enhanced advertising packages with CarGurus, which in turn generate revenue.
23. CarGurus effectively offers three tiers of packages to dealers:
 - (a) **Basic** – This is the free, no-cost package whereby CarGurus posts Vehicle Listings on the CarGurus Website, tracks leads, and provides the dealer with anonymized leads and a means for communicating with the potential consumer through CarGurus. The dealer is limited to 12 photographs per Vehicle Listing.

- (b) **Enhanced Placement** – This is the package whereby CarGurus posts the dealer’s Vehicle Listings on the CarGurus Website, tracks leads, and provides the dealer with leads that direct consumer contact information and a means for consumers to communicate directly with the dealer. CarGurus additionally posts on the CarGurus Website certain dealer content, such as its trademark, name and contact information, phone number, directions, and a link to its primary website and/or vehicle details page (“VDP”), so that this content may be viewed by consumers. The dealer may upload more than 12 photographs per Vehicle Listing.
- (c) **Featured Placement** – This package is the same as the Enhanced Placement package, with CarGurus additionally showcasing dealer inventory at the top of search results pages in “Featured Listings” slots.

24. Paragraphs 25-30, below, clarify and update the information in the First Affidavit at paragraphs 59-64.

25. Beginning in the Fall of 2015, CarGurus started to send all dealers with Vehicle Listings on the CarGurus Website monthly reports of how many leads a dealer received as a result of its Vehicle Listings on the CarGurus Website.

26. If a dealer received a material number of leads from CarGurus, beginning in September 2015, CarGurus had a salesperson contact the dealer to see if it was interested in entering into a paying relationship for enhanced Vehicle Listings and advertising on the CarGurus Website.

27. [REDACTED]

28. As of December 12, 2015, CarGurus had 39 Canadian dealers who were paying an average of \$400/month each for advertising packages. The total revenue for that month was approximately \$16,000.

29. The number of Canadian dealers with advertising packages increased to 137 as of March 31, 2016, with dealers paying an average of \$500/month. The total revenue for March was approximately \$80,000.
30. CarGurus' total revenue from Canadian dealers to March 31, 2016 is approximately [REDACTED] well below the [REDACTED] CarGurus projected it would have generated in this time period (see Exhibit "11", below).

Trader's Market Share

31. On its website, Trader self-describes as "the leading digital player in Canadian automotive, boasting the top marketplaces autoTRADER.ca (which generates 14 million visits each month), autoHEBDO.net, and the popular car buyer information site Autos.ca." A copy of the "Company Overview" page on the Trader Website is attached hereto as **Exhibit "9"**.
32. In terms of consumer traffic, ComScore data shows that of all the Digital Marketplaces that present only new and used car listings (unlike, for example, Kijiji.ca Cars and Vehicles, which also displays listings for spare automobile parts and accessories), Trader is by far the largest, enjoying four times the number of unique website visitors as its next largest competitor. Attached as **Exhibit "10"** is a copy of an internal CarGurus competitive analysis of ComScore data that CarGurus prepared in the fall of 2015, prior to any threats of litigation from Trader.
33. I understand that Trader's dominance and status as a major Digital Marketplace for Vehicle Listings allows it to benefit from powerful network effects.
34. Because of Trader's dominance in this downstream market, I understand that dealers and automobile sellers believe they need to have their listings on the Trader Website,

and enter into agreements with Trader whereby the dealers and sellers believe they give up any rights in their Vehicle Listings to Trader. This grants Trader access to a massive number of unique Vehicle Listings over which it has absolute control. Dealers and sellers are unwilling to take any actions that jeopardize that.

Communications between Trader and CarGurus in June 2015

35. As described in the First Affidavit at paragraph 122, lead attribution is critical. If a dealer is under the impression that Trader, and not CarGurus, is the source of a lead, the dealer will have little incentive to enter into a paying relationship with CarGurus; instead, the dealer would assume that CarGurus is ineffective at connecting it with consumers.

Impact of Removing Vehicle Listings on CarGurus and Consumers

36. Consumers who use Digital Marketplaces for Vehicle Listings expect to be able to access comprehensive listings. There are two elements to comprehensiveness. The first is that consumers want to know that they are accessing as many Vehicle Listings as are available for the geographic area they are interested in. As well, they expect the information that comprises the Vehicle Listing to be as complete as possible. This ensures that the consumer has confidence that in conducting research, he or she is being afforded the opportunity to review thorough comparisons and effective research.
37. If a consumer has doubts about the comprehensiveness of the Vehicle Listings on a given Digital Marketplace, that consumer is more likely to choose to use an alternative, more comprehensive, Digital Marketplace. In a two-sided market like this (with dealers on one side, populating the Digital Marketplace with vehicles, and consumers on the other side, seeking to conduct market research), a drop in the number of consumers using the site will have a concomitant effect on the number of dealers who will be willing to use and enter into a paying relationship with the Digital Marketplace provider.

Anticompetitive Motivations for Trader's Conduct

38. Trader is leveraging its dominance as a major Digital Marketplace to enhance the exclusive privileges it enjoys over Trader Inventory and, in particular, over photographs in which it claims copyright in the Trader Application.
39. Trader's treatment of CarGurus and its refusal to deal with CarGurus on commercially reasonable terms stems from Trader's concern that CarGurus' expansion in the Canadian market would threaten Trader's market dominance.
40. As noted in the First Affidavit at paragraph 110, I believe that Trader views CarGurus as its biggest competitive threat because the CarGurus Website is innovative and CarGurus drives considerable value to dealers and the public, as is proven by CarGurus' U.S. business. CarGurus' IMV ratings drive consumer traffic and VDP views not only to the CarGurus' Website, but also dealers' websites based on CarGurus' rankings. This provides value to dealers that Trader cannot.
41. Moreover, CarGurus offers these services either for free or for a lower cost than Trader offers its own services. For example, CarGurus' basic package, which is offered to dealers free of charge, includes posting dealers' inventory on the CarGurus Website with up to 10 photographs, and allows CarGurus Website users to anonymously email such dealers about their available vehicles for sale.
42. I believe that Trader's different treatment of CarGurus and its refusal to deal with CarGurus on the usual trade terms with which it deals with other Digital Marketplaces stems from CarGurus' low pricing policy and from Trader's concern that CarGurus' expansion in the Canadian market would force Trader to compete by providing more innovative products and services and by lowering its prices

The Impact of Trader's Conduct on CarGurus, Competition, and Consumers

43. Trader's refusal to enter into a syndication agreement on commercially reasonable terms and its assertion of copyright in photographs, which forced CarGurus to remove Trader Inventory from the CarGurus Website, have had, and are having, a direct and substantial measurable and deleterious impact on CarGurus' business. Without being able to obtain Trader Inventory, CarGurus will not be able to compete effectively with Trader or provide value to Canadian consumers.
44. Further to paragraph 124 of the First Affidavit, without a comprehensive inventory of photographs in Vehicle Listings, CarGurus is receiving less traffic and generating fewer leads to dealers, which prevents revenue realization.
45. Trader itself has acknowledged the importance of photographs to Vehicle Listings. At paragraph 25 of the Dunbar Affidavit, Mr. Dunbar affirms that photographs are a key feature for how vehicle sellers present and market their vehicles online, and Exhibit "E" to the Dunbar Affidavit demonstrates that buyer interest in a Vehicle Listing is much higher if even a single photo is included.
46. There is a direct correlation between photographs and leads and our ability to identify prospective new dealers for revenue-generating relationships. The number of dealers with a material number of leads, which prompts a discussion of revenue-generating relationships with dealers, has diminished since CarGurus removed Trader Inventory. This is particularly acute in the market on which CarGurus is focused, namely, English-speaking consumers in Ontario, where there is the highest concentration of dealers.
47. Email leads for inventory posted to the CarGurus Website from Trader Inventory dropped from an average of [REDACTED] leads/day to [REDACTED] leads/day after the photographs for

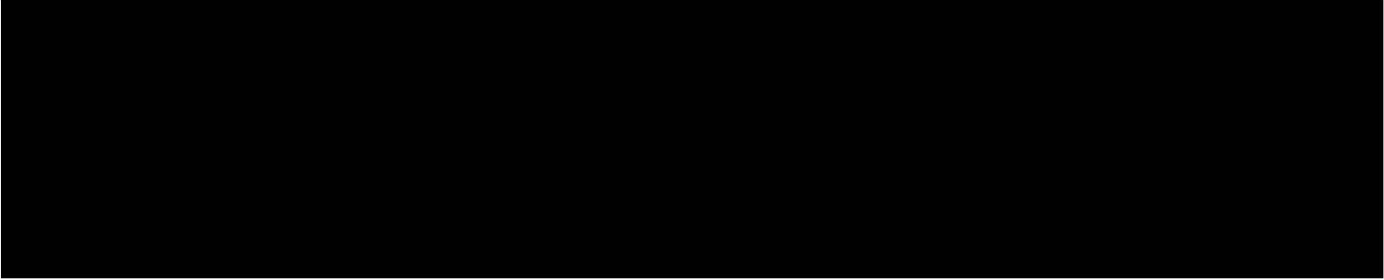
these listings were removed. In other words, without photographs, CarGurus has lost [REDACTED] of leads for dealers whose Vehicle Listings are related to Trader.

48. CarGurus lost approximately [REDACTED] of our overall lead volume when we removed the Trader Photos.

49. Because Trader refuses to syndicate to CarGurus on commercially reasonable terms or terms consistent with other Digital Marketplaces, CarGurus cannot sign up Trader dealers for enhanced advertising packages which generate revenue. This means that CarGurus cannot contract with approximately 42.5% of the market, since CarGurus has no way to obtain photographs or Vehicle Listings inventory for Trader dealers. CarGurus' account size is also reduced by approximately 42.5% as we sign up accounts.

50. Attached as **Exhibit "11"** is a comparison prepared by CarGurus' Chief Financial Officer of (1) CarGurus' original Canada 2015-2017 forecast (prepared December 2015); (2) CarGurus' revised forecast (as of April 2016); and (3) CarGurus' actual revenue through March 31, 2016. CarGurus' forecasts prepared as of December 2015 and April 2016 are also included at Exhibit "11". CarGurus estimates that the loss of photographs and inability to display Trader Inventory has cost CarGurus approximately [REDACTED] in revenue to date. CarGurus' forgone revenue through 2017 is estimated to be [REDACTED].

51. The chart below demonstrates the effect of the removal of the Trader Photos on the CarGurus Website using the core metrics CarGurus uses to measure the use of CarGurus Website: detail percentage (percentage of unique visitors that viewed at least one car for sale); detail views per visitor (average number of Vehicle Listings (detail pages) each visitor viewed); and, most importantly, conversion rate (percentage of visitors who contacted at least one dealer about a car for sale):

- 
52. After CarGurus removed the Trader Photos, the conversion rate decreased by 16%. A negative impact to the conversion rate demonstrates an increasingly negative consumer experience of the CarGurus Website, which diminishes the CarGurus Website's growth, repeat visitors, and value provided to dealers.
53. Further, most of CarGurus' advertising revenue is made from advertising on VDP views, which have dropped by [REDACTED]. The reduction in total VDP views represents not only a large reduction in user engagement (measured by time spent on the CarGurus Website), but also a corresponding [REDACTED] decrease in advertising revenue.
54. In the longer term, the reduction in leads and the corresponding reduction in the ability to monetize leads will affect all aspects of CarGurus' Canadian business, preventing CarGurus from continuing to develop innovative features to assist consumers in their purchasing path. Consumers suffer from the lack of innovation and lack of competition. If Trader continues its current practices, the percentage of the market it controls will only increase with time as it enters into exclusive agreements with additional dealers and Feed Providers, and the adverse effects on CarGurus' business from Trader's conduct are likely to grow.
55. The harm that CarGurus' business has sustained as a result of the removal of Trader Inventory demonstrates that it is an essential input for a Digital Marketplace to be an effective competitor.

56. CarGurus is still trying to source Vehicle Listings from all available Feed Providers in Canada. However, even if CarGurus obtains data feeds from all of them, the CarGurus Website will not have a true reflection of the available Canadian inventory, as Trader controls at least 42.5% of the marketplace and will not allow Feed Providers to syndicate any Trader Inventory to CarGurus.
57. In fact, as stated above, by refusing its consent, Trader is trying to ensure that inventory is not syndicated to CarGurus even if a dealer requests it and a Feed Provider would otherwise be willing to syndicate that dealer's inventory to CarGurus.
58. CarGurus has received complaints from dealers who want to have their Vehicle Listings on the CarGurus Website but have been prevented in doing so by Trader. CarGurus has a list of more than 30 dealers who would like to work with CarGurus but cannot because of Trader's refusal to consent to syndication of Trader Inventory to CarGurus. Moreover, Trader itself acknowledges at paragraph 11 of the Dunbar Reply Affidavit that at least 36 dealers have approached Trader seeking syndication of their Vehicle Listings to CarGurus. Trader has refused.
59. If Trader continues its current practices, the percentage of the market it controls will only increase with time as it enters into exclusive agreements with additional dealers and Feed Providers, shutting CarGurus out of the market.
60. Trader has produced certain agreements it has with dealers and Feed Providers, specifically its Master Service Agreement, Data Feed Agreement and Trader Dealer Syndication Agreement, in the Trader Application. Copies of these agreements are attached as Exhibits "A" and "C" to the Dunbar Reply Affidavit attached as Exhibit "7" hereto.

61. Sections 3.1, 6.1, 6.6, and 6.7 of Trader's Master Service Agreement are reproduced below:

3.1 The Dealer hereby acknowledges and agrees that Trader and the Trader Associates (as hereinafter defined), or any of their respective licensors, own and shall retain all legal right, title and interest in and to the Software and Services, including any intellectual property rights that subsist in the Software or Services (of whatever nature, whether registered or not, and wherever in the world those rights may exist). Without limiting the foregoing, the Dealer acknowledges that Trader exclusively owns the intellectual property rights related to any written content, graphics, images, and/or photographs taken, created, written, or developed by Trader, Trader Associates, or their employees, contractors, or representatives, pursuant to this Agreement or otherwise. The Dealer shall not reproduce any of these proprietary materials without Trader's express prior written consent.

...

6.1 In the course of the Dealer's use of the Software and Services, the Dealer may be required to provide (or Trader or its representatives may collect) certain information about itself and its inventory (the "Dealer Information"). The Dealer consents to Trader's collection, storage, distribution, use and making available of such Dealer Information as Trader may reasonably require in order to carry on its business and/or to provide the Software and Services.

...

6.6 By submitting, posting or displaying Dealer Content in connection with any of the Services, the Dealer hereby grants to Trader and all Trader Associates a perpetual, irrevocable, worldwide, royalty-free, sublicenseable [*sic*], and non-exclusive license to use, reproduce, adapt, modify, translate, publish, publicly perform, make available, publicly display and distribute any Dealer Content, as Trader may reasonably require in order to carry on its business and/or provide the Software and Services. This license is for the sole purpose of enabling Trader and all Trader Associates to display, distribute and promote the Software or Services, and to display, publish, analyze and archive Dealer listings and advertisements placed pursuant to this Agreement. The Dealer agrees that this license includes a right for Trader and the Trader Associates to make the Dealer Content available to their licensors. The Dealer understands that Trader or any Trader Associate, in performing the required technical steps to provide the Software or Services to the Dealer, may: (a) transmit or distribute the Dealer Content over various public networks and in various media; and (b) make such changes to the Dealer Content as are necessary to conform and adapt the Dealer Content to the technical requirements of connecting networks, devices, services or media. The Dealer hereby acknowledges and agrees that this license shall permit Trader to take all of the foregoing actions. The Dealer confirms, represents and warrants to Trader that it has all of the rights, power and authority necessary to grant this license.

6.7 Dealer agrees that Trader may aggregate and anonymize the Dealer Content and/or the Dealer Information and analyze, collect, store, distribute and use that information for any reasonable business purpose.

62. Section 2.1.1 of Trader's Data Feed Agreement stipulates:

2.1.2 For certainty the license granted pursuant to Section 2.1.1. shall not:

...

2.1.2.2 permit the Syndication Partner to providing [*sic*] or sublicense the Trader Data to any third party for any purpose whatsoever.

2.1.3: The Syndication Partner will not, and is expressly prohibited from using alternative means (including, but not limited to, the use of robots, spiders or scraping) to obtain the Data from Trader, other than as contemplated under this Agreement; provided however that, for greater certainty, Trader acknowledges and agrees that nothing in this Agreement will prevent or restrict the Syndication Partner from obtaining and using any data obtained from a source other than Trader.

63. The terms of Trader's Dealership Syndication Agreement state:

If Dealer wishes to republish the Dealer Data via any 3rd party website or other medium, Dealer must first obtain Trader's approval of each 3rd party website or medium. (3rd party websites and media approved by Trader shall be referred to in this Agreement as "Approved 3rd Party Media", and the parties who publish Approved 3rd Party Media shall be referred to as "Approved 3rd Parties") Dealer Data may not be republished anywhere other than on the Dealer's website or on Approved 3rd Party Media. Trader may charge a fee for republication of the Dealer Data on Approved 3rd Party Media, and Dealer agrees to pay all such fees to Trader in a timely fashion.

Dealer acknowledges that the Dealer Data in aggregate form, and the individual photos and textual or other elements of the Dealer Data taken individually are proprietary works owned by Trader, and protected under copyright and other intellectual property law. All Dealer Data is and shall remain the sole property of Trader.

64. The above exclusivity provisions in Trader's agreements with dealers and Feed Providers prohibit dealers and Feed providers from syndicating Trader Inventory to CarGurus without Trader's consent, which consent Trader refuses to grant.

65. This affidavit is sworn in support of CarGurus' application pursuant to s. 103.1 of the Act for leave to bring an application under ss. 75, 76, and 77 of the Act, and for no other or improper purpose.

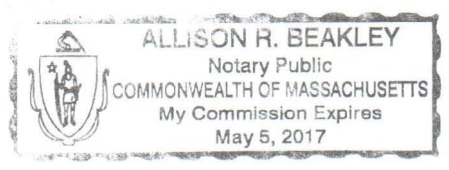
SWORN before me at the City of)
Cambridge, in the State of)
Massachusetts, this 19 th day of April,)
2016.)
)
)
)
)
)



Notary Public



Martha Blue



TO: The Registrar
Competition Tribunal
90 Sparks Street, Suite 600
Ottawa, ON K1P 5B4

Tel: 613-957-7851
Fax: 613-952-1123
filing.depot@ct-tc.gc.ca

AND TO: John Pecman
Commissioner of Competition
Competition Bureau
50 Victoria Street
Gatineau, QC K1A 0C9

Tel: 819-997-4282
Fax: 819-997-0324

AND TO: GOODMANS LLP
Bay Adelaide Centre
333 Bay Street, Suite 3400
Toronto, ON M5H 2S7

Peter Ruby
Michael Koch
Hannah Arthurs

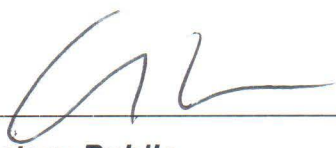
Tel: 416-979-2211
Fax: 416-979-1234

pruby@goodmans.ca
mkoch@goodmans.ca
harthurs@goodmans.ca

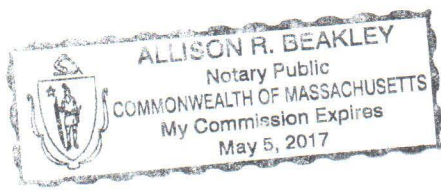
Lawyers for the Respondent

1

This is Exhibit "1" referred to in the Affidavit of Martha Blue sworn before me this 14th day of April, 2016.



Notary Public



Cv 15 - 11232 - 0002

Court File No.

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

BETWEEN:



TRADER CORPORATION

Applicant

- and -

CARGURUS, INC.

Respondent

APPLICATION UNDER SECTION 34(4) OF THE
COPYRIGHT ACT, R.S.C. 1985, c. C-42 AS AMENDED

NOTICE OF APPLICATION

TO THE RESPONDENT

A LEGAL PROCEEDING HAS BEEN COMMENCED by the applicant. The claim made by the applicant appears on the following pages.

THIS APPLICATION will come on for a hearing on a date and time to be established by the Commercial List Office before a judge presiding over the Commercial List at 330 University Avenue, Toronto, Ontario, M5G 1E6.


IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38A prescribed by the *Rules of Civil Procedure*, serve it on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in this court office, and you or your lawyer must appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but at least four days before the hearing.

-2-

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO OPPOSE THIS APPLICATION BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date: December 18, 2015

Issued by _____

Local Registrar

Address of court office: 330 University Avenue, 7th Floor
Toronto, Ontario M5G 1R7
A. Anissimova
Registrar

TO: CarGurus, Inc.
2 Canal Park
4th Floor
Cambridge, Massachusetts 02141
United States of America

-3-

APPLICATION

1. The applicant, Trader Corporation (“Trader”), makes application for:
 - (a) a declaration that the respondent, CarGurus, Inc. (“CarGurus”), has infringed Trader’s copyright in 144,974 photographs;
 - (b) statutory damages in the amount of \$72,487,000;
 - (c) punitive damages in the amount of \$1,000,000;
 - (d) an Order enjoining CarGurus from reproducing and communicating to the public by telecommunication, without the written agreement of Trader, any and all photographs of vehicles with respect to which Trader is the copyright owner, including but not limited to displaying such photographs on the cargurus.com website;
 - (e) an Order for the delivery up by CarGurus to Trader of all Trader Photos (as defined below) in its possession or control;
 - (f) prejudgment interest in accordance with section 128 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
 - (g) postjudgment interest in accordance with section 129 of the *Courts of Justice Act*;
 - (h) costs of this proceeding on a substantial indemnity basis, plus all applicable taxes; and
 - (i) such further and other relief as to this Honourable Court may seem just.

-4-

2. The grounds for the application are:

The Parties

- (a) Trader is a corporation incorporated pursuant to the laws of the Province of New Brunswick. Its principal executive offices are located in Toronto, Ontario. Trader and its predecessor corporations entered into business less than 50 years ago.
- (b) Trader operates what is referred to as a “digital marketplace” for vehicles in Canada. Via autotrader.ca and autohebdo.net, Trader advertises a large inventory of new and used vehicles for sale in Canada. Through these digital marketplaces, purchasers can search for vehicles by model, make, colour and year, among other criteria, and can contact vehicle sellers. Trader sources its inventory from private sellers and vehicle dealers. Trader also provides a comprehensive set of marketing software solutions to Canadian vehicle dealers.
- (c) In order to compete with other providers, including free marketplace services, Trader aims to provide premium services to dealers. One such service offered by Trader is its Capture service. If a dealer subscribes to Trader’s Capture service, Trader has one of its employees, or a contractor who has assigned his or her intellectual property rights to Trader, visit the dealership, consult with the dealer, take photos of the vehicles (“Trader Photos”), gather from the dealer information about the vehicles and, using a software application designed by Trader, organize and upload all this data for display on one or more of Trader’s and the dealer’s websites.

-5-

- (d) Photographs of vehicles are at the centre of, and are integral to, Trader's business and the marketplace that it has created.
- (e) CarGurus is a corporation incorporated pursuant to the laws of Delaware in the United States of America. CarGurus operates a website, cargurus.com, that is a digital marketplace for the purchase and sale of new and used vehicles. In Canada, CarGurus lists dealer vehicles for sale and buyers can search for such vehicles.
- (f) On the top right corner of every webpage on cargurus.com is a geographic flag that allows a user to choose among American, Canadian and British versions of the website. When the Canadian geographic flag is set, the vehicles displayed to users are located in Canada.

Copyright Infringement on a Massive Scale

- (g) In summary, CarGurus has, in Canada, pirated at least 144,974 Trader Photos with respect to which Trader owns the copyright and has used these pirated works to expand its operations to the Canadian market, effectively using Trader's property to illicitly compete with Trader.
- (h) Trader is the first owner or assignee, and continuing owner, of the copyright in the Trader Photos.
- (i) Each Trader Photo is an original work.

-6-

- (j) Trader has not assigned its copyright interests in the Trader Photos to any person, nor has it licensed or permitted its licensees to sub-license the Trader Photos to CarGurus.
- (k) In Canada, CarGurus has copied, or otherwise reproduced from many dealer websites, at least 144,974 Trader Photos or a substantial part thereof.
- (l) In Canada, CarGurus has communicated at least 144,974 Trader Photos to the public by telecommunication by making them available to Ontarians through the cargurus.com website.
- (m) CarGurus was aware or had reasonable grounds for suspecting that copyright subsisted in the Trader Photos.
- (n) In June 2015, Trader first complained to CarGurus that CarGurus was infringing Trader's rights in Trader Photos, but CarGurus has not ceased this infringement.

Statutory Damages

- (o) The *Copyright Act* provides for the award of statutory damages in a sum of not less than \$500 with respect to the infringement of each Trader Photo, subject to the Court not finding that the total award is grossly out of proportion to the infringement.

General

- (p) Sections 3(1), 13(1), 13(3), 27(1), 34, 38.1 and 39.1 of the *Copyright Act*, R.S.C. 1985, c. C-42, as amended.

-7-

- (q) Rule 14.05 of the Rules of Civil Procedure.
 - (r) This notice of application is served on the Respondent outside Ontario pursuant to the following sub-sections of Rule 17.02 of the *Rules of the Civil Procedure*:
 - (a) *Property in Ontario*: The Trader Photos are personal property located in Ontario;
 - (g) *Tort Committed in Ontario*: CarGurus committed the statutory tort of copyright infringement in Ontario by, in Ontario, copying or otherwise reproducing and communicating to the public the Trader Photos;
 - (i) *Injunctions*: Trader is seeking an order enjoining CarGurus from reproducing and communicating to the public in Ontario the Trader Photos; and
 - (p) *Carrying on Business in Ontario*: CarGurus is carrying on business in Ontario by offering its services to buyers and sellers of vehicles in Canada and dealing with dealers in Canada.
 - (s) Such further and other grounds as counsel may advise.
3. The following documentary evidence will be used at the hearing of the application:
- (a) affidavits to be sworn; and

-8-

- (b) such further and other evidence as the lawyers may advise and this Honourable Court may permit.

December 18, 2015

Goodmans LLP
Barristers & Solicitors
Bay Adelaide Centre
333 Bay Street, Suite 3400
Toronto, ON M5H 2S7

Peter Ruby LSUC#: 38439P
Hannah Arthurs LSUC#: 55337O

Tel: 416.979.2211
Fax: 416.979.1234

Lawyers for the Applicant

TRADER CORPORATION - and - CARGURUS, INC.
Applicant Respondent

G15-11232-000
Court File No.

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at Toronto

NOTICE OF APPLICATION

Goodmans LLP
Barristers & Solicitors
Bay Adelaide Centre
333 Bay Street, Suite 3400
Toronto, ON M5H 2S7

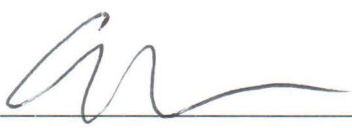
Peter Ruby LSUC#: 38439P
Hannah Arthurs LSUC#: 55337O

Tel: 416.979.2211
Fax: 416.979.1234

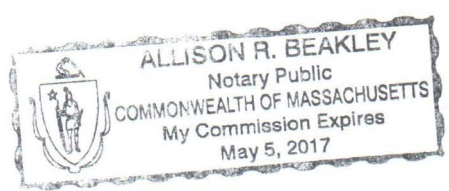
Lawyers for the Applicant

2

This is Exhibit "2" referred to in the Affidavit of Martha Blue sworn before me this 14th day of April, 2016.



Notary Public



Court File No. CV-15-11232-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

BETWEEN:

TRADER CORPORATION

Applicant

- and -

CARGURUS, INC.

Respondent

AFFIDAVIT OF MARTHA BLUE

I, MARTHA BLUE, of the City of Cambridge, in the State of Massachusetts, hereby MAKE OATH AND SAY:

1. I am the Senior Vice-President Business Development for the Respondent, CarGurus, Inc. ("CarGurus"). I have held this position since November 1, 2015, and joined CarGurus in 2011. I have personal knowledge of the matters contained in this affidavit, except where I have indicated that my knowledge is based on information from others, in which case I believe that information to be true. In preparing this affidavit, I have consulted the business records of CarGurus, including emails received by its employees. Where I have referred to such emails, I indicate the name of the CarGurus employee who received the email and the sender. I have also reviewed the Notice of Application of the Applicant, Trader Corporation ("Trader") and the affidavits of the Trader employees that are identified in my affidavit.

- 2 -

2. Prior to joining CarGurus, I was a freelance marketing consultant, and was Senior Director of Licensing at Reebok, where I worked across several brands (Reebok, Weebok, Rockport) and several categories including footwear, apparel, accessories, hard goods and fitness equipment. Prior to Reebok, I was involved in sports marketing with professional sports leagues including Major League Baseball, U.S. Open Golf and the National Hockey League.
3. I have an MBA from the Tuck School of Business at Dartmouth College and a BA from Harvard University.

CarGurus LLC and CarGurus, Inc.

4. CarGurus LLC was founded in 2006 as a Massachusetts limited liability company by Langley Steinert, co-founder and former Chairman of TripAdvisor. In the summer of 2015, CarGurus LLC converted from a limited liability company to CarGurus, which is a privately owned corporation.
5. CarGurus' Board of Directors includes Steve Kaufer, co-founder and current CEO of TripAdvisor, and Simon Rothman, formerly Global Vice President and General Manager of eBay Motors. CarGurus ranked in the top 1000 on the Inc. 5000 Fastest Growing Private Companies in 2011, 2012, 2013, 2014, and 2015. It was also named to Forbes' list of America's Most Promising Companies in 2015. CarGurus is based in Cambridge, Massachusetts.
6. CarGurus owns and operates a website located at <http://www.cargurus.com>, which, as described at paragraph 20 below, is a Digital Marketplace, and specifically an automotive research website that assists purchasers of automobiles by allowing them to compare listings for used and new vehicles within a geographic area, and to contact sellers.

Digital Marketing of Automobiles

7. Before I describe the business of CarGurus, I will discuss the recent transformation with respect to how vehicles are marketed for sale. It is this transformation that led to the creation of CarGurus.
8. Over the last few decades, the consumer purchase path in the automotive industry has transformed. Today, the path increasingly begins online, and while most consumers do not buy vehicles online, they often conduct research and price evaluations before visiting sellers.
9. When researching online, consumers want information tailored to their needs while searching for a new or used vehicle, and they want to use online channels to narrow down their search.
10. Information about specific makes and models of vehicles is commonly provided online by original equipment manufacturers ("OEMs"). In the automobile industry, OEMs include branded automotive companies, most of whom operate websites. For example, Ford Motor Company operates a website at <http://www.ford.ca>.
11. Information is also commonly provided by dealers franchised by OEMs to sell their new automobiles. For example, Yorkdale Ford is a Ford dealership located in Toronto, Ontario and it operates a website at <http://www.yorkdaleford.com>.
12. Information is also provided by dealers who sell used automobiles.
13. In addition, there are a large number of private sellers who want to advertise their automobiles for sale.
14. To accommodate this change in the path to purchase, a number of businesses provide services to OEMs, dealers and private sellers to make it easier to disseminate vehicle information. For example, there are a

- 4 -

number of suppliers of online support services to OEMs and dealers, including Trader and Dealer Dot Com, Inc. ("DDC").

15. One of the many services that Trader, DDC and others offer to OEMs and dealers in the United States and Canada is website development and hosting. Trader and DDC offer joint website development and web hosting to OEMs and dealers under Trader's dealerSMARTsolutions products. For the purpose of this affidavit, I will call companies that offer website development and hosting "Enhanced Services Providers".
16. In addition to OEMs' and dealers' own websites, consumers also look to third party sources for comparative and unbiased information.
17. Typically, the information available online includes, for each vehicle, the make, model, year, Vehicle Information Number ("VIN"), mileage and price, as well as photographs. Other details about the car, such as the type of transmission and engine size, are typically also provided. I will call the collection of such information a "Vehicle Listing".
18. In some cases, the price of the vehicle is not provided because the dealer wants to be able to negotiate it. However, it would be uncommon to market a vehicle without photographs.
19. Trader and CarGurus are direct competitors in that they both amalgamate information from OEMs, dealers and private sellers and make it accessible to buyers through search engines on their respective websites in Canada. The Trader websites are autotrader.ca, and autohebdo.com, which is in French (collectively the "Trader Website"). The CarGurus Canadian website is <http://www.ca.cargurus.com> (the "CarGurus Website").
20. Through these websites, Trader and CarGurus do not sell automobiles; rather, they connect buyers and sellers so that transactions may be conducted directly. For the purposes of this affidavit, I will describe websites that enable consumers to search amalgamated information on

- 5 -

available automobile inventory from OEMs, dealers and private sellers as “Digital Marketplaces”.

21. In addition to being a Digital Marketplace, Trader is also an Enhanced Services Provider. By contrast, CarGurus is not an Enhanced Services Provider; rather, its sole business in Canada is the operation of a Digital Marketplace.

Business of CarGurus

22. As noted above, CarGurus owns and operates a U.S. website located at <http://www.cargurus.com>, which is a Digital Marketplace. The servers for this website are located in Boston, Massachusetts. The U.S. website went “live” in 2007.
23. In the U.S., the inventory on CarGurus’ website is populated by obtaining data feeds of Vehicle Listings from third parties, such as DDC, who receive Vehicle Listings from dealers and syndicate them to CarGurus (collectively, “Feed Providers”), and by crawling websites as discussed below. Both DDC and Trader, in addition to being Enhanced Service Providers, are also Feed Providers.
24. In the U.S., some Feed Providers take photographs of vehicle inventory for dealers. Many dealers also take photographs of the vehicles themselves. This is becoming increasingly common since the advent of digital cameras and the inclusion of high-quality cameras on cellular telephones, which means that minimal effort is required to take photographs of vehicles.
25. In the U.S., regardless of who takes the photograph, the prevailing industry view is that dealers own the photographs in the Vehicle Listings. If dealers do not want their Vehicle Listings displayed on our website, the Vehicle Listings are removed by CarGurus upon request, in accordance with the notice and takedown provisions in the *Digital Millennium*

- 6 -

Copyright Act. It is our understanding that as long as CarGurus takes down any Vehicle Listings that were collected via crawling upon request, CarGurus limits its potential liability for copyright infringement. In fact, CarGurus has never been sued in the U.S. for copyright infringement by any party.

26. That said, take down requests in the U.S. are very rare because CarGurus provides a valuable service to dealers. In particular, the more often dealer inventory is presented to potential buyers, the greater the number of leads to the dealers; the greater the number of leads, the greater the likelihood of a resulting sale.
27. There are several ways in which CarGurus' Digital Marketplace is innovative and distinguishes itself from others in the U.S. (and also in Canada as discussed in the next section):
 - (a) **Clean Interface.** The <http://www.cargurus.com> website provides a clean (i.e. uncluttered) interface for users. The website is efficient, effective and easy to use.
 - (b) **Mathematical algorithms to produce Instant Market Value ("IMV").** CarGurus developed a mathematical algorithm to analyze and compare prices and features on automobiles for sale. The algorithm looks at each individual Vehicle Listing on a CarGurus website and gives an analysis for the consumer as to whether the associated price is "fair", "good", "great" or "over-priced" relative to other Vehicle Listings in the market. In other words, CarGurus does the analysis for the consumer rather than the consumer having to research whether the price offered for a particular car by a particular dealer is a good deal. CarGurus was the first Digital Marketplace in the U.S. to apply a comparative analysis to individual Vehicle Listings. Components of CarGurus' mathematical algorithm are the subject of two pending patents in the U.S.

- 7 -

- (c) **Search Engine.** The <http://www.cargurus.com> website is a search engine and not merely a classified site. We try to index and provide consumers with the entirety of vehicle inventory available for purchase listed online and in the market.
- (d) **Consumer-Focused Site.** We are a consumer-focused site even though our revenue is generated from dealers. We track how long vehicles have been on dealers' lots, dealers' reputations, consumer feedback on dealers, fraud detection, and dealers who may be trying "bait and switch" techniques. CarGurus gathers a lot of information from Vehicle Listings to rank vehicles using its IMV, providing the best potential matches to consumers. We try to create a fair and transparent marketplace to help consumers make good purchasing decisions. This is because we believe what is good for the consumer is also good for the dealer, and will result in a less complicated transaction with a more satisfied consumer. Consumers who visit dealers with a third party price validation are often more ready to purchase a vehicle and less likely to haggle.
- (e) **Price Drop Feature.** CarGurus tracks the price history of Vehicle Listings posted on a CarGurus website and alerts users who have signed up for such alerts, to drops in price for specific vehicles being tracked by those users.
- (f) **Traffic.** As of April 2015, CarGurus operates the second largest Digital Marketplace in the U.S. by daily unique visitors. By driving traffic to our website, we in turn, drive more consumers to dealers.
- (g) **Pricing for Dealers.** We send leads to dealers free of charge. As explained below, we use leads to demonstrate our value to dealers and encourage them to purchase advertising packages from us. For example, if our site has generated numerous leads to dealers,

- 8 -

they may be more inclined to purchase additional dealer services that typically generate more leads.

28. The <http://www.cargurus.com> website also offers a discussion platform for car enthusiasts and automotive experts, who submit questions, offer insight, gather and share information and provide reviews of vehicles and dealers. This platform also helps make the website a destination for consumers interested in purchasing new and used vehicles.

CarGurus' Launch in Canada

29. On May 26, 2015, CarGurus announced the launch of the CarGurus Website. The server for this website is also located in Boston, Massachusetts.
30. Given the success of CarGurus in the U.S., CarGurus believed that it could effectively compete in the Canadian marketplace by replicating the innovative features that it had developed for the U.S. market, as discussed above.
31. For example, the CarGurus Website is similarly clean, efficient, and operates as a search engine rather than merely a classified site. Moreover, I believe CarGurus was the first Digital Marketplace in Canada to employ an analysis and ranking of individual Vehicle Listings based on pricing.
32. CarGurus did not spend any money marketing the CarGurus Website for several months following the launch. Our plan was to first work out kinks in the website and allow it to be live for a couple of months so Google's search engine could index the pages, which would drive traffic to the site. We planned to then consider ways to monetize the site.

Populating CarGurus' Canadian Website at Launch and Thereafter

33. At launch, CarGurus populated the CarGurus Website with inventory from two sources: roughly 50% of the inventory was direct data feed from Feed Providers; and roughly 50% was from crawling dealer websites, primarily those hosted by DDC.

(i) Data Feeds

34. At launch and thereafter, CarGurus obtained data feeds from the following Feed Providers, on an Opt-In or Opt-Out basis. These terms are described below.

Source	Opt IN or OUT
HomeNetAuto	Opt IN
AutoCorner	Opt IN
Dealer Car Search	Opt IN
Cobalt	Opt IN
Dealer.com Select	Opt IN
V12 Software	Opt IN
Strathcom Media Canada	Opt OUT
Boost Motor Group	Opt OUT
eDealer	Opt IN
Dealer Fire	Opt IN
FlexDealer	Opt IN
Carpages.ca	Opt IN
wheels.ca	Opt IN
cDemo	Opt IN
VinSolutions Canada	Opt IN
AIM Experts	Opt OUT
sm360	Opt IN
Leadbox	Opt IN
Vicimus	Opt IN
CAMS	Opt IN
immediatemb.ca	Opt IN
Dealcercity.ca	Opt IN
V10 Data	Opt OUT
One Eighty Corp	Opt IN
HGregoire	Opt IN

- 10 -

35. Generally, we do not know the origin of the content in the data feeds provided by Feed Providers. In every case, we rely on the Feed Provider to have obtained the consent of the dealers to share their inventory with us. I understand that CarGurus' Feed Providers obtain consent as set out below. To the extent that there are duplicative Vehicle Listings from Feed Providers, we de-duplicate the data feeds by using the VIN assigned to each vehicle.

(a) "Opt-Out" Feed Providers

36. Some Feed Providers obtain the consent of participating dealers to feed data to CarGurus (and other Digital Marketplaces) by using an "opt-out" mechanism. To illustrate, V10 now sends its entire dealer data feed to CarGurus. Before beginning to send the feed, V10 emailed all of its dealers multiple times advising them that V10 would be pushing their Vehicle Listings to CarGurus on a "go-live date" and allowed dealers to "opt-out". If a dealer opted out, then its Vehicle Listings were not, and currently are not, included in the feed provided by V10 to CarGurus. Each new dealer V10 signs up is also advised that its Vehicle Listings will be pushed to CarGurus, and the dealer has the ability to opt out. V10 is responsible for ensuring that only dealers who want their Vehicle Listings on the CarGurus Website are included in the V10 data feeds pushed to CarGurus. V10 is the only Canadian Feed Provider CarGurus pays for data feeds. The rate is \$0.06 CAD per listing.

(b) "Opt-In" Feed Providers

37. Some Feed Providers obtain the consent of their dealers to feed data to CarGurus (and other Digital Marketplaces) by using an "opt-in" mechanism. To illustrate, Cobalt has set up a data feed to CarGurus. If a dealer wants to have its Vehicle Listings pushed to CarGurus, it must contact Cobalt and "opt-in" by advising Cobalt that it wishes its Vehicle

- 11 -

Listings to be included in the feed. Cobalt sends CarGurus an email every time a dealer is added to Cobalt's CarGurus data feed. If at any time a dealer no longer wishes to have its Vehicle Listings included in the CarGurus data feed, it can contact Cobalt, who removes it from the data feed.

38. With either of these two options, dealers can still have their Vehicle Listings removed from the CarGurus Website by contacting us to request a "dealer block".
39. A "dealer block" means that a dealer has contacted CarGurus and asked that its Vehicle Listings be removed from the CarGurus Website. If we get Vehicle Listings from a data feed or a crawl pertaining to a dealer who has asked to be blocked, we will not post those Vehicle Listings on the CarGurus Website.

(ii) Crawling

40. As mentioned above, CarGurus also obtains Vehicle Listings by crawling dealer websites. Set out below is a chart identifying the web hosts that CarGurus crawled at the time of launch:

Source
cobaltgroup.com
dealer.com
dealereprocess.com
dealeron.com
forddirect.com
vinsolutions.com

41. As discussed below, the majority of the crawled photographs at issue in this proceeding came from crawling DDC's server.

(a) DDC

42. DDC is based in Burlington, Vermont, and operates the website <http://www.dealer.com>. It is both an Enhanced Services Provider and a

- 12 -

Feed Provider. It is not a Digital Marketplace. Rather, it offers various digital marketing tools to OEMs and dealers in both the U.S. and Canada, including website design and hosting.

43. In Canada, roughly 1,500 dealers have their websites hosted on the servers maintained by DDC. These websites display Vehicle Listings.

(b) CarGurus' Business Relationship with DDC and Trader's Anti-Competitive Conduct

44. On October 10, 2013, DDC and CarGurus entered into a Referral and License Agreement (the "DDC Agreement"). The DDC Agreement is confidential, so I have reproduced below only the relevant sections.
45. Section 2 of the DDC Agreement sets out the grant of "DDC Inventory" to CarGurus.

2. Grant of DDC Inventory Licenses. Subject to the terms and conditions of this Agreement, DDC hereby grants Vendor a limited, non-exclusive, non-transferable (except as expressly permitted hereunder), fully paid-up and royalty-free right and license in the United States and Canada to (a) use, publish, display and frame the DDC Inventory on the www.cargurus.com website, and (b) use the DDC Inventory in order to: (i) internally test, evaluate and perform validation and verification of the DDC Inventory; and (ii) perform any integration and development efforts between the DDC Inventory and the www.cargurus.com website. DDC will provide the DDC Inventory feed to Vendor nightly. Notwithstanding anything set forth herein to the contrary, DDC may remove a specific DDC Customer's inventory from the DDC Inventory at any time upon the request of the DDC Customer. Vendor shall have no duty or obligation to display or use the DDC Inventory (in whole or in part) and may temporarily or permanently discontinue or suspend any use of the DDC Inventory at any time for any reason. No provision in the Agreement shall prohibit Vendor from modifying Vendor's website in its sole discretion. **NOTWITHSTANDING THE FOREGOING, THE LICENSES GRANTED UNDER THIS SECTION 2 ARE SUBJECT TO DDC SENDING WRITTEN NOTICE TO VENDOR THAT DDC IS READY FOR THESE LICENSES TO BECOME EFFECTIVE. SUCH NOTICE MAY BE SENT (OR NOT SENT) IN DDC'S SOLE DISCRETION.**

- 13 -

46. The terms from section 2 above are defined in the DDC Agreement, as follows:
- (a) "DDC Customer" means "a party for whom DDC (either itself or through a contractor, reseller or agent) develops, hosts, provides or operates a DDC Service."
 - (b) "DDC Inventory" means "new and used car inventory from DDC Customers, excluding inventory from OEM programs that DDC is not permitted to provide to Vendor". DDC Inventory includes make, model, mileage, year, where the car is located, specifications and photos.
 - (c) "DDC Services" mean "various websites, customers relationship management (CRM) and digital marketing products/solutions that DDC (either itself or through a contractor, reseller or agent) develops, hosts, or operates on behalf of DDC Customers."
47. The DDC Agreement specifically refers to the U.S. and Canada. CarGurus received and continues to receive DDC Inventory with respect to the U.S.
48. Until January 2016, CarGurus received certain Canadian Vehicle Listings from DDC, after which DDC advised it could no longer send us any "Trader Inventory".
49. By "Trader Inventory" I mean all Vehicle Listings with which Trader has any involvement, including the following:
- (a) those on dealer websites that are hosted using dealerSMARTsolutions products;
 - (b) those containing photographs allegedly taken using Trader's "Capture Service" (as defined in the affidavit of Lucian Neacsu, Director of Operations for Trader); and

- 14 -

- (c) those syndicated by Trader (i.e. fed by Trader to third parties pursuant to written agreements).
50. DDC said that it could not provide CarGurus with Trader Inventory because of DDC's "exclusive" agreement with Trader covering Canada.
51. I note that Trader is seeking a declaration that CarGurus has infringed Trader's claimed copyright in 144,974 photographs (which are alleged to relate to 19,258 unique vehicles). Of those photographs, CarGurus has determined that approximately 103,000 photographs were obtained by CarGurus from crawling dealer websites hosted by DDC. I believe that the crawling occurred in the U.S.
52. To my knowledge, DDC does not claim ownership of any of the copyright on the websites it hosts in the U.S. or Canada.
53. Further, at the time of crawling, and as discussed below, CarGurus did not know that Trader claimed ownership of the copyright in the vehicle photographs that were included in the Trader Inventory. Rather, CarGurus thought that it was each dealership that owned any copyright in each Vehicle Listing, which is the typical situation in the U.S.
54. Accordingly, CarGurus believed that if any Canadian dealer objected to the posting of the dealer's Vehicle Listings on the CarGurus Website, CarGurus would be contacted by the dealer (or by DDC), and would remove the content in the same manner as content is removed in the U.S. as discussed in paragraph 25 above.

CarGurus' Revenue Model

55. CarGurus' revenue model begins by generating leads to dealers.
56. A lead begins when a visitor wants to contact a dealer through the CarGurus Website. The visitor must either (1) fill out an online form and then press "send" and an email message is delivered to the dealer via

- 15 -

CarGurus; or (2) call the dealer using a phone number on the CarGurus Website. (If the dealer has purchased an advertising package from CarGurus, which also features the dealer's address, then a visitor can click a URL to contact the dealer directly, or visit the dealership.)

57. At the bottom of those leads sent by email, there is an invitation to dealers to contact CarGurus about entering into a paying relationship: i.e. "if you're interested in getting more leads like these, call us".
58. CarGurus does not charge dealers for leads sent to them, but uses the leads to encourage dealers to purchase enhanced advertising packages with CarGurus.
59. Beginning in the Fall of 2015, CarGurus started to send all dealers monthly reports of how many leads a dealer received as a result of Vehicle Listings on the CarGurus Website.
60. If a dealer had more than 10 leads in a month from CarGurus, starting in September 2015, CarGurus had a salesperson contact the dealer to see if they were interested in entering into a paying advertising relationship for enhanced Vehicle Listings on the CarGurus Website.
61. As of December 12, 2015, CarGurus had 39 Canadian dealers who were paying an average of \$400/month each for advertising packages. The total revenue for that month was approximately \$16,000.
62. The amount charged by CarGurus per dealer for advertising packages varies based on dealership size, the number of Vehicle Listings and the size of the market in which the dealer operates (e.g. city vs. town).
63. The number of Canadian dealers with advertising packages increased to 62 as of January 13, 2016, which for that month generated approximately \$36,000 in revenue.

- 16 -

64. Accordingly, CarGurus' total revenue from Canadian dealers to January 2016 is approximately \$66,000.

Automotive Dealer Market in Canada

65. The Canadian automotive market is comprised of two types of dealers: dealers who are franchised by OEMs to sell new and used OEM-branded automobiles, and non-franchised or independent dealers who sell used automobiles.
66. The exact number of automobile dealerships across Canada is difficult to quantify as there is no central registry maintained by the Canadian government. At present, I estimate that there are approximately 6,000 to 8,000 dealers across Canada. My estimate is based on the combined membership of the Canadian Automobile Dealers Association (CADA) and the Used Car Dealers Association of Ontario (UCDA), which is about 8,000. However, some dealers may be members of both associations, which is why the number could be lower than 8,000. Attached as Exhibit "A" are print-outs from the websites of both associations identifying their membership numbers.

Trader's Market Share

67. There are approximately 10 businesses in Canada who offer Digital Marketplaces, and in my experience, Trader is the dominant Digital Marketplace.
68. There are a number of ways to track market share, including the number of dealers and their Vehicle Listings, inventory, and daily views.
69. In terms of dealers, using the "dealer locator" function on the Trader Website, as of January 30, 2016, Trader appears to have a relationship with 6218 dealers in Canada as shown in the following excerpt from the Trader website.

The screenshot shows the autoTRADER.ca website interface. At the top, there is a navigation bar with categories like 'Cars, Trucks & SUVs', 'Commercial / Heavy Trucks', 'Trucks', 'RVs', 'Boats', 'Watercraft', 'Motorcycles & ATVs', 'Snowmobiles', 'Heavy Equipment', and 'Farm Equipment'. Below this, there are links for 'POST FREE AD', 'OWNER REVIEWS', 'NEWS & FEATURES', and '0/4 Compared vehicles'. A prominent banner at the top right says 'LIST YOUR CAR FOR FREE' with a 'GET STARTED' button. The main content area shows 'Dealers found: 6218' and a search bar with 'autoTRADER.ca Services' entered. A pagination bar at the bottom shows '1' selected, with 'Next' and 'Last Page' buttons.

70. Assuming that the number of dealers in Canada is 8,000 (which is probably high), and if Trader has a relationship with 6218 dealers, then it has a relationship with 78% of the new and used automotive dealers in Canada. If the total number of dealers is lower, then Trader has an even larger market share.
71. In terms of Vehicle Listings, we believe that Trader has the exclusive control of an estimated 42.5% of all Vehicle Listings in Canada. This estimate is based on CarGurus' internal analysis of Vehicle Listings that CarGurus cannot obtain from any source other than, or without the consent of, Trader.
72. In fact, Trader-controlled inventory may be higher if all or part of the other 57.5% of inventory from Feed Providers includes Vehicle Listings from Trader.
73. To put it in perspective, Trader's dominance is equivalent to preventing a search engine like Google from indexing and making searchable at least 42.5% of the information available on the Internet.
74. I note that Trader has admitted its dominance as a major supplier of Vehicle Listings in Canada in paragraph 11 of the affidavit of Roger Dunbar (Vice President of Marketing at Trader), wherein Mr. Dunbar states that "Trader is at the *center* of the car buying process in Canada, connecting consumers, dealers and original equipment manufacturers (also known as "OEMs" or car manufacturers)."

75. Mr. Dunbar also acknowledges in paragraph 15 that “Trader’s marketplaces benefit from powerful network effects” and states that “[t]he size of Trader’s visitor base draws more dealers (and their vehicle inventories) to Trader’s marketplaces, whose listings in turn draw more consumers.”
76. As described below, CarGurus is suffering from the inverse of these network effects, caused by Trader’s refusal to allow CarGurus access to what Trader has designated as Trader Inventory, on commercially reasonable terms.

Communications between Trader and CarGurus in June 2015

77. In June 2015, I received an email from DDC telling me that Trader would like me to contact Allen Wales (Trader’s Vice President of Technology). I said DDC was free to give my contact information to Trader. DDC asked me if CarGurus was crawling DDC Inventory. I did not answer that question. DDC advised that it was getting pressure from Trader to stop CarGurus from whatever we were doing by either using its relationship with us or technological means.
78. CarGurus received a letter dated June 10, 2015 from Trader’s prior intellectual property counsel. The letter referred to CarGurus scraping the Trader Website. CarGurus has never done that.
79. I subsequently emailed Mr. Wales on June 11, 2015, to arrange a time to speak. On June 17, 2015 I received an email from Mr. Wales, saying he wanted to talk to me about the following agenda items:
- (i) *Canadian dealer complaints for unauthorized inventory on Cargurus*
 - (ii) *Inventory syndication agreement and process for ‘consenting’ Dealers*

- 19 -

(iii) *Unauthorized scraping of AutoTrader & Dealer websites.*

80. On June 18, 2015, my colleague Sam Zales (President International and Dealer Operations) and I had a conference call with Mr. Wales, Mr. Dunbar and Robert Rath (Vice President of Business Development at Trader). The call lasted approximately 30 minutes.
81. During the call, Mr. Rath asked me if CarGurus was scraping data from Trader and I said "no". He also asked me if CarGurus was scraping data from DDC and I did not answer him.
82. At no time during the call, did Mr. Rath or any other Trader participant tell us that Trader owned copyright in the photographs on dealer websites. I would have remembered that if it had been said, as the situation would have been entirely different from that in the U.S.
83. As set out below, it was not until December 2015 that we were advised that Trader was claiming copyright in photographs allegedly taken by Trader employees on dealer websites.
84. Almost one month after our call, on July 7, 2015, I received an email from Mr. Rath, copying Mr. Wales, attaching a document called the "Data Feed Agreement" (hereinafter the "Syndication Agreement"). A copy of the email and Syndication Agreement are attached as Exhibit "B".
85. On July 8, 2015, I advised Mr. Rath that I would not be in the office until the following week and would not be able to review the Syndication Agreement until then.
86. Upon my return, I reviewed the Syndication Agreement and found a number of terms to be of great concern to CarGurus as they were designed to prevent CarGurus from effectively competing with Trader in the Canadian marketplace. For this reason, I did not contact Mr. Rath or anyone else at Trader about entering into the agreement.

- 20 -

87. In particular, Section 2.6.1 of the Syndication Agreement would require that leads to dealers from CarGurus Website visitors go through Trader, so that the leads are attributable to Trader. This would suggest to the dealer that the lead is coming from Trader and not CarGurus, which aside from harming our business by suggesting to the dealers that we are providing no value, is false and misleading. Moreover, by insisting that all leads be sent via Trader, the lead volume that Trader could claim to be sending to dealers would be erroneously inflated.
88. This section is reproduced below:

2.6.1 Syndication Partner will provide ***attribution on each ad page in the form of a link that points to the original ad on autoTRADER.ca. These links must be crawlable by search engines and must not have the attribute of "nofollow"*** to ensure proper attribution is passed to the original autoTRADER.ca page. Where the data fee is provided from Trader, the Syndication Partner will provide ***attribution rights on each Syndication Partner vehicle detail page in the form of a logo link as approved by Trader that states "Info Provided by autoTrader.ca"***. Syndication Partner, at its own cost, will use commercially reasonable efforts to develop a working sample of the attribution required by the foregoing sentence for the vehicle detail page within thirty (30) days of the Effective Date [emphasis added].

89. Moreover, section 2.6.1 would require CarGurus to put an indexable link back to the listing on autotrader.ca. This is contrary to Google's policy regarding "unnatural" links. In particular, Trader wanted us to link back to the Vehicle Listing on the Trader Website and ensure that the link is crawlable by Google and does not have a no-follow tag on it. This practice signals to Google that it should give that target website a higher ranking in Google searches. Google has forbidden doing this as part of an exchange agreement because it would allow companies to artificially increase their rankings in Google's search engine. If CarGurus engaged in such linking back, Google could tie penalties to the CarGurus Website, with the ultimate penalty being de-indexing of the CarGurus Website from Google's search engine. This has happened in the past to other websites, as is

- 21 -

explained in the New York Times article dated February 12, 2011 and attached as Exhibit "C" hereto.

90. Section 2.6.2 of the Syndication Agreement would have also required us to contact dealers through phone numbers and emails that Trader provided to us, that we use Trader email addresses and phone numbers for sending leads to dealers (no matter what the dealer requests), and that we allow Trader to intercept and track our emails and phone calls to dealers. All of these requirements would significantly harm our business by giving Trader intelligence about our business that Trader could use to compete with us.
91. This section is reproduced below:
- 2.6.2 Syndication Partner will add Trader supplied Tracking Details to each listing page for all Participating Dealerships and will not replace or augment any Tracking Details supplied by Trader during the term. In addition, Syndication Partner may provide its own Syndication Partner call tracking number for telephone calls ("Syndication Partner Tracking Details") that will be forwarded to the designated Trader call tracking number. Syndication Partner may not include its "this call may be recorded" feature for such Syndication Partner Tracking Details. Syndication Partner shall utilize the provided Trader email address from the Tracking Details for email leads on the Syndication Partner vehicle detail page email button [emphasis added].**
92. At a minimum, it would give Trader insight into the number of leads we generate, conversations our users have with dealers, the inventory that we were able to generate leads on, and our relative value to a dealer compared to theirs.
93. We did not receive any further communication from Trader between July 7, 2015 and December 1, 2015.

Communication between Trader and CarGurus in December 2015

94. CarGurus' counsel, Bereskin & Parr LLP, received a letter from Trader's current counsel on December 2, 2015, which alleged that CarGurus copied and is communicating to the public at least 150,000 photographs owned by Trader.
95. We did not know until December 2015 that Trader claimed copyright ownership in photographs on dealer websites, nor did we know that these photographs were allegedly taken by Trader employees and contractors.
96. Since the December 2 letter did not identify the dealers or VINs associated with the photographs at issue, CarGurus did not know which photographs on the CarGurus Website were alleged to infringe.
97. Accordingly, on the evening of December 8, 2015, CarGurus removed all photographs from the CarGurus Website for Vehicle Listings that were obtained by crawling and not otherwise obtained from Feed Providers. This resulted in the removal of over 1 million photographs. The removal is further explained in the affidavit of Oliver Chrzan, Senior Vice President Engineering, which I have read and believe to be true.
98. We decided to remove these photographs without having any proof that Trader's employees or contractors took the photographs or that Trader owns the rights in these photographs.
99. The request for Trader to provide a list of the dealers whose photographs CarGurus allegedly copied was repeated by email sent on December 17, 2015 from CarGurus' counsel to Trader's counsel. A copy of this email is attached as Exhibit "D". I am advised that no response was received until Trader served most of its evidence on December 22, 2015.

Trader's Capture Service

100. Following service of the Notice of Application on December 18, 2015 and the accompanying affidavits on December 22, 2015 I learned for the first time the details of Trader's "Capture Service", which is described in paragraph 24 of the Dunbar affidavit. It is a service which Trader asserts "involves Trader's employees and contractors taking photographs of clients' vehicles ("Trader Photos") to be posted on Trader's and the dealers' websites."
101. I note that nowhere in the evidence filed by Trader does it identify the authors of the Trader Photos alleged to have been copied by CarGurus. I am also advised that our counsel has requested this information from Trader's counsel, but that no reply has been received.
102. As noted above, it is uncommon for the provider of any capture service in the U.S. to claim copyright in photographs of dealers' vehicles. In fact, I am not aware of any. Further, in Canada, I am aware of at least two Feed Providers who also offer capture services, but who do not claim ownership of the vehicles photographs, namely Carpages.ca and Boost Motor Group.
103. To my knowledge, neither of the above companies claims copyright ownership in the photographs taken by their capture services; rather, they consider all information pertaining to dealers' inventory, including photographs, to be the dealers' property to disseminate as they wish.
104. I am aware that Carpages.ca and Boost Motor Group also offer applications that dealers can readily use to take photographs for Vehicle Listings and upload to their websites.

- 24 -

How Trader Limits Inventory to CarGurus Regardless of Copyright Ownership

105. To my knowledge, Trader has told dealers and Feed Providers not to syndicate Trader Inventory to CarGurus, on the basis that Trader's prior consent is required. Trader will not provide that consent.
106. As a result, and as will be explained further below, Feed Providers (including Carpages.ca and DDC) have cancelled certain data feeds to CarGurus.
107. Carpages.ca has told us that it doesn't have the ability to re-syndicate Vehicle Listings for Canada without the express permission of Trader. In one instance Carpages re-syndicated by mistake and was advised by Trader not to do so. Attached as Exhibit "E" is an email exchange between Jimmy Gogan, Dealer Account Executive of CarGurus, and "Michelle" in Support at Carpages, regarding Carpages inability to re-syndicate Vehicle Listings in Canada without Trader's permission.
108. Aside from Kijiji.ca, I do not know whether Trader has syndication agreements with other Digital Marketplaces in Canada, and if so, whether such agreements contain terms similar to those presented to CarGurus on July 7, 2015.
109. Kijiji.ca has advised CarGurus that Kijiji has a syndication agreement with Trader. Although we do not have a copy of that agreement, we have been told that it does not contain the terms described at paragraphs 87 to 92 above that we found to be anti-competitive.
110. I believe that more than any other Digital Marketplace, Trader views us as the biggest competitive threat because the CarGurus Website is innovative and we drive considerable value to dealers and the public, as is proven by our U.S. business.

- 25 -

111. I also believe that Trader's treatment of CarGurus and its refusal to deal with CarGurus on commercially reasonable terms stems from Trader's concern that CarGurus' expansion in the Canadian market would threaten Trader's market dominance.
112. I have been advised by Oliver Chrzan, and believe, that he has reviewed other Canadian Digital Marketplaces and has never seen a link back to the Trader Website. Accordingly, the requirement in Section 2.6.1 of the Syndication Agreement may have been designed to target CarGurus.
113. As noted in paragraph 49 above, Trader Inventory includes not just dealers who use the Trader Capture Service, but all dealers to whom Trader provides services. As discussed further below, this is a significant percentage of dealers in Canada, and has resulted in Feed Providers stopping syndication of dealers' Vehicle Listings to CarGurus regardless of whether the dealer uses Trader's Capture Service. None of the Feed Providers listed at paragraph 34 above, can syndicate Trader Inventory to CarGurus.
114. For example, if a dealer takes its own photographs but puts them on a DDC-hosted website, and they use Trader for syndication, Trader will not syndicate to CarGurus even though Trader can claim no copyright in the photographs.
115. A dealer can advise Trader that it would like to have its inventory syndicated to CarGurus; however, Trader can refuse to do so even if the dealer takes its own photographs, because it does not have a signed syndication agreement with CarGurus. Attached as Exhibit "F" is an email exchange between a dealer, Scott Davidson of Stop 23 Auto Sales Ltd, and Chris Hill of Trader, confirming that Trader will not syndicate to CarGurus regardless of ownership in Stop 23 Auto Sales' content. The email exchange was forwarded by Scott to Sheila Carlson, Dealer Account Executive of CarGurus.

- 26 -

116. Trader's conduct is contrary to representations that it makes on the Trader Website, which suggests that Trader syndicates "everywhere". To the contrary, it would appear that Trader is highly selective and strategic about syndication. A print out of the Trader Website "syndicated listings" webpage is attached as Exhibit "G".
117. Since Trader will not allow syndication of any Trader Inventory to CarGurus on commercially reasonable terms that would allow us to compete with Trader, we would need to have dealers compile all listing information about their vehicles and take a second set of photographs (assuming that the existing photographs may be owned by Trader), and then upload the information and different photographs into at least two different systems: the Trader Website and at least one Feed Provider. This would involve a very significant amount of work, which a dealer is not likely to do if it can simply rely on Trader to do it for them. Accordingly, it appears that Trader has unfairly targeted CarGurus.
118. CarGurus is negotiating with Kijiji.ca to obtain a data feed agreement, and although the talks are in the early stages, Kijiji has told us that they will not send a feed for any Trader Inventory without Trader's consent. To date, Trader has refused consent.
119. Since the Fall of 2015, we have been trying to work with a company called CarProof which tracks historical data on vehicles, such as whether a vehicle has been in any accidents. CarProof told us that "one of our canada [*sic*] marketplace partners is pushing us to agree not to integrate with cargurus in Canada. Apparently you have the incumbents in Canada nervous". We interpreted this to be a reference to Trader. Attached as Exhibit "H" is an email exchange between Ed Woiteshek of CarProof and Andrew Grochal, Business Development Manager of CarGurus, where Ed makes the above statement.

- 27 -

Impact of Removing Vehicle Listings on CarGurus and Consumers

120. Comprehensive Vehicle Listings are critical to the success of a Digital Marketplace: there is a direct correlation between Vehicle Listings, website traffic, leads to dealers and resulting revenue for the Digital Marketplace.
121. In terms of website traffic, Vehicle Listings have a multiplier effect. Suppose on the first visit to a Digital Marketplace, with a comprehensive inventory, consumers have a good experience. As a result of that good experience, consumers will return to the website and may refer others to that website.
122. More visitors to the CarGurus Website results in more leads to dealers (i.e. potential customers are directed to the dealer and it's Vehicle Listings). Leads are the only real way that we can show dealers that our website adds value to their businesses.
123. There are other benefits to inventory. Visitors stay on the CarGurus Website for longer when there is a higher photograph inventory. This in turn increases page views and assists with search results and page views/display advertising.
124. As a result of Trader's actions, the CarGurus Website is missing a significant proportion of Vehicle Listings and we believe that it is obvious to users of the CarGurus Website that we do not have all available inventory. Also, without a comprehensive inventory of photographs in Vehicle Listings, CarGurus is receiving less traffic and generating fewer leads to dealers.
125. CarGurus is still trying to source Vehicle Listings from all available Feed Providers in Canada. However, even if we obtain data feeds from all of them, the CarGurus Website will not have a true reflection of the available Canadian inventory, as Trader controls at least 42.5% of the marketplace

- 28 -

through a combination of its Capture Service and its syndication network, and will not allow Feed Providers to syndicate any Trader Inventory to CarGurus.

126. In fact, as stated above, by refusing its consent, Trader is trying to ensure that inventory is not syndicated to us even if a dealer requests it and a Feed Provider would otherwise be willing to syndicate that dealer's inventory to us. A copy of an email a dealer received from Trader refusing to syndicate the dealer's Vehicle Listings to CarGurus, is attached as Exhibit "F".
127. There is a direct correlation between Vehicle Listings and leads, and our ability to identify prospective new dealers for CarGurus' enhanced advertising packages. The number of dealers with 10+ leads per month has diminished. This is particularly acute in the market on which we have focused, namely, English-speaking consumers in Ontario, where there is the highest concentration of dealers.

Allegations of Complaints from Canadian Dealers

128. Allen Wales alleges in paragraph 5 of his Affidavit that after CarGurus entered the Canadian market in May 2015, Trader received complaints from dealers that their vehicles were appearing on the CarGurus Website without their permission.
129. Paragraphs 31 and 32 of Roger Dunbar's affidavit identify dealers who allegedly complained to Trader that they do not want their Vehicle Listings posted on the CarGurus Website. None of these dealers complained directly to CarGurus, and in fact, the CarGurus Website generated leads for these dealers, as shown in the chart below:

- 29 -

Location ID	Name	City	Region	Country	Lead Total
354895	Duval Mercedes-Benz	Boucherville	QC	CA	16
355535	Duval Toyota	Boucherville	QC	CA	26
356181	Gateway Toyota	Edmonton	AB	CA	77
357084	Nisku Ford	Leduc	AB	CA	14
357403	Duval Volkswagen	Longueuil	QC	CA	16
357773	Duval Mazda	Boucherville	QC	CA	20
358355	Brentridge Ford Wetaskiwin	Wetaskiwin	AB	CA	25
358432	Daleo Motors	Hamilton	ON	CA	126
358741	Brown Bros. Ford Lincoln	Vancouver	BC	CA	18
358995	Auto Flash	Saint-Hubert	QC	CA	82
359109	Barnes Wheaton GM North Surrey	Surrey	BC	CA	31
359328	Granville Toyota	Vancouver	BC	CA	66
360296	Pioneer Chrysler Jeep	Mission	BC	CA	35
360609	Peterborough Volkswagen Audi	Peterborough	ON	CA	75
361092	Saab of KW Premium Fine Vehicles	Kitchener	ON	CA	138
361303	West Coast Toyota	Pitt Meadows	BC	CA	52
365656	OBK Automobiles	Laval	QC	CA	36
378914	Forbes Motors Inc.	Waterloo	ON	CA	4

130. Because of the manner in which the some of the leads are directed to the dealer, some or possibly all of the above leads would have appeared to the dealer to have been generated by the Trader Website, erroneously inflating Trader's lead generation and misleading the dealers as to the source of the leads.

131. Of the dealers above alleged to have complained to Trader, CarGurus made no money from forwarding any of these leads other than with respect to the four dealers identified below, who directly consented to CarGurus pushing their Vehicle Listings and purchased or enrolled in one of CarGurus' enhanced advertising packages:

Nisku Ford (current CarGurus client – in \$100/month bracket)

Daleo Motor Sales (current CarGurus client)

- 30 -

Barnes Wheaton GM (currently on trial of CarGurus)

Gateway Toyota (was on a trial, decided not to continue)

132. I note that the Dunbar affidavit attaches only one email from a dealer who allegedly complained, and specifics of the telephone calls between Mr. Dunbar, his team, and the dealers, are not provided. Accordingly, it is not clear to us why these dealers complained to Trader, if they actually did. As noted above, none of these dealers has complained to CarGurus directly.
133. CarGurus has received its own complaints from dealers who want to have their Vehicle Listings on the CarGurus Website but have been prevented in doing so by Trader. We have a list of at least 30 dealers who would like to work with us but cannot because of Trader's refusal to consent to syndication of Trader Inventory to CarGurus.

Trader's Statutory Damages Claim

134. From my review of Trader's Notice of Application, I note that Trader is seeking a declaration that CarGurus has infringed Trader's claimed copyright in 144,974 photographs (which are alleged to relate to 19,258 unique vehicles) and statutory damages in the amount of \$72,487,000, as well as punitive damages in the amount of \$1,000,000.
135. Leaving aside the request for punitive damages, the monetary relief sought by Trader would place a value of \$500 per photograph.
136. This amount is grossly out of proportion to the value placed on each photograph based on Trader's own agreement with its syndication partners. In fact, the value assigned by Trader for each photograph would be less than \$1.00.
137. Specifically, the Syndication Agreement provided by Mr. Rath to me in July 2015 valued "Participating Dealership's Trader Data" at \$5.00 per

- 31 -

month for all its Vehicle Listings, including photographs, syndicated that month (which would be dozens), as shown in the excerpt below:

1.1.8 **"Syndication Support & Service Fee"** means, in a given month, the aggregate amount of \$5.00 (inclusive of any applicable taxes) per Participating Dealership during such month; provided that the Participating Dealership's Trader Data has been syndicated to the Syndication Partner Site, all in accordance with this Agreement, for no less than one (1) full calendar month. For greater certainty, in the event a Participating Dealership is on-boarded to the Syndication Partner Site mid-month, the Syndication Support & Service Fee in respect of that particular Participating Dealership shall not apply in that month (nor shall it be pro-rated).

138. I am advised by Oliver Chrzan, and believe, that the approximately 144,974 photographs in dispute pertain to 501 Canadian dealers. Assuming all of these photographs were posted beginning June 2015, and some were posted much later, and applying Trader's proposed fee, the value of the disputed photographs would be: (501 dealers x 5.00 per month x 7 months) / 144,974 photographs, for a total of \$17,535, or about \$0.12 per photograph.
139. I have personally had discussions with Boost Motor Group and Carpages.ca, regarding the cost of their capture services. As can be seen from our email exchanges, copies of which are attached as Exhibits "I" and "J" hereto, Boost offers a capture service for \$14 per car (for 15 photographs) to \$20 per car (for 28 photographs), for a per photo cost of between \$0.71 and \$0.93. Carpages.ca offers its capture services on a monthly basis of \$200 for 50 cars (for 18 photographs), for a per photo cost of \$0.22.
140. CarGurus' gross revenues in Canada for all of its operations from June 2015 up to January 17, 2016 totals approximately \$100,000, which includes roughly \$5,500 monthly for page view/display advertising. This is not CarGurus' profit but its entire revenue from its operations in Canada. To date, CarGurus has not made a profit from its operations in Canada.

- 141. Further, I doubt that there is any copyright in the photographs at issue because they are intended to be exact reproductions of the vehicles being sold, and because they are taken from specified standard angles that are the same as those used in the photographs we post for our U.S. and U.K. websites.
- 142. Also, I believe it would be misleading to the public to embellish or alter the photographs. Other than for technical reasons, such as to resize the image, CarGurus never does so.
- 143. In fact, the photographs at issue are typically on the CarGurus Website for no more than 60 days, until each car is sold, and are never re-used thereafter. This seems to be industry practice as well, and I note that Trader's Syndication Agreement requires photographs to be removed no later than 60 days from when they are first posted.
- 144. In other words, the photographs have no intrinsic value other than to help a dealer sell a car through a Vehicle Listing.
- 145. According to paragraph 33 of the Dunbar affidavit, Trader says it has suffered "harm", but "the impact of that harm is not yet observable". I take this to mean that Trader has not suffered any monetary loss or other damage as a result of CarGurus' actions as set out in the Notice of Application.

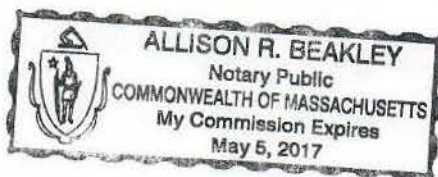
SWORN BEFORE ME at the)
 City of Cambridge, in the State)
 of Massachusetts, this 3rd day)
 of March, 2016)

Martha Blue

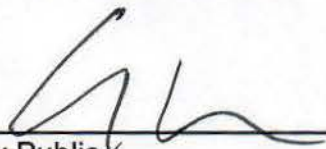
 MARTHA BLUE

[Signature]

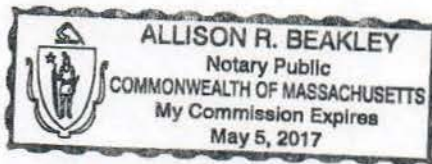
 Notary Public)



THIS IS EXHIBIT "A" MENTIONED AND REFERRED TO IN THE AFFIDAVIT OF MARTHA BLUE SWORN BEFORE ME THIS 3RD DAY OF MARCH, 2016.



Notary Public



Français

E-mail: *

Password: *

Login

[Not a member?](#) [Forgot Password?](#)[Home](#) [Government](#) [Industry](#) [Legal](#) [CADA 360](#) [Media](#) [About CADA](#) [Dealer Locator](#) [Links](#)

CADA 360 Garage Insurance

Serving dealers for over 25 years.

[Learn More](#)

Flash News

2016-02-08[Latest Economic Report is here!](#)**2016-01-15**[Latest issue of Newslines is here!](#)**2015-11-24**[CADA's Rick Gauthier set to leave in 2016](#)

CADA Overview



The Canadian Automobile Dealers Association (CADA) is the national association for franchised automobile and truck dealerships that sell new cars and trucks. Our 3,200 dealers represent a key sector of Canada's economy. Through our dealers, we are represented in nearly every community and those dealers collectively employ over 140,000 people across the country.

CADA is a federation of provincial and regional dealer associations. Our Board of Directors is made up of the representatives of those organizations. Our Executive Committee includes dealers chosen by each of the major regions and the President of CADA. This means that our regional members have direct input into the association's strategic direction and daily decision-making.

New CADA 75th Chairman Harry Mertin to head association in challenging year



Chilliwack, BC dealer and veteran of the retail automobile industry Harry Mertin was named as CADA's Chairman for 2015/16 at the association's annual Members' meeting in Calgary in October. Mertin is taking up his duties as CADA gears up to work with a new government, for round two of its fight over tax fairness for dealers with the Canada Revenue Agency and once again faces off with the banks over the issue of vehicle leasing.

Mertin is no stranger to these and the many other issues on CADA's agenda as it fulfills its mandate to protect dealers' interests, having served on the national Executive Committee since his election as Secretary-Treasurer three years ago. "Harry steps into the Chairman's job well prepared to deal with the challenges of the year ahead," says CADA President & CEO Rick Gauthier.

[Home](#) [Government](#) [Industry](#) [Legal](#) [CADA 360](#) [Media](#) [About](#) [Links](#)[Privacy Policy](#) [Terms of Use](#) [Contact](#)

© 2016 Canadian Automobile Dealers Association

UCDA Used Car Dealers Association of Ontario Search



The UCDA has over 4,700 members in over 500 communities across Ontario.

Our goal is to help foster a fair used vehicle buying experience that safeguards both the consumer and the dealer.

Use this site for valuable information about the car buying process, including:

- [Buyer's checklist](#)
- [Avoiding Curbsiders](#)
- [Finding a dealer](#)
- [Finding a car](#)

By Your Postal Code

OR

By Dealer Name

Dealer City

Search

"LIKE US" >

"FOLLOW US" >

"WATCH US" >

Free Mediation



When the customer and dealer can't agree – try a free mediation. Today in Ontario, the process of buying a used car from a dealer is usually businesslike and pleasant. But occasionally s...

[Continue Reading](#)

The Ontario Safety Standards Certificate



Is the Ontario Safety Standards Certificate also a warranty? In a word, no. When it comes to buying a used vehicle, the Safety Standards Certificate (SSC) is an essential part of the pro...

[Continue Reading](#)

Saturday Morning



Watch the UCDA Commercial to see why you should find your next car at carpages.ca!...

[Continue Watching](#)

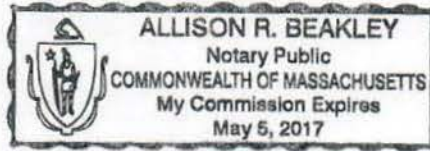
Find a Car
powered by carpages.ca



THIS IS EXHIBIT "B" MENTIONED AND REFERRED TO IN THE AFFIDAVIT OF MARTHA BLUE SWORN BEFORE ME THIS 3RD DAY OF MARCH, 2016.



Notary Public



[REDACTED]

[REDACTED]

[REDACTED]

From: Robert Rath
Date: Tuesday, July 7, 2015 at 9:39 AM
To: Marty
Cc: Allen Wales
Subject: Data Agreement

Hi Marty, I am following up on our meeting last month please find enclosed a copy of our standing data agreement for your review.

Regards

Robert Rath | VP, Dealership Products & Business Development
TRADER Corporation

Phone: 416.784.5200 ext. 3364

Email: robert.rath@trader.ca

Web: www.tradercorporation.com

DATA FEED AGREEMENT

THIS DATA SYNDICATION AGREEMENT (this “**Agreement**”) is made as of June __, 2013 (the “**Effective Date**”),

B E T W E E N:

_____, a corporation incorporated [under the laws of Canada], (the, “**Syndication Partner**”)

– and –

TRADER CORPORATION, a corporation amalgamated under the laws of Canada, (“**Trader**”)

WHEREAS the Syndication Partner offers online classifieds in a variety of categories, including cars & other passenger vehicles;

AND WHEREAS Trader collects and maintains certain data with respect to the inventory of its Dealerships;

AND WHEREAS the parties desire for Trader to deliver the Trader Data for listing (in the form of classifieds listings) on the website located at [www.XXX.ca] (the “**Syndication Partner Website**”), as more fully set forth in this Agreement.

AND WHEREAS the parties desire for the Syndication Partner to deliver the Syndication Partner Data to Trader for listing on the website located at [www.autotrader.ca] (the “**Trader Website**”) and as more fully set forth in this Agreement. [DRAFT NOTE: any other Trader websites? What about autoheβδο.ca?]

NOW THEREFORE in consideration of the mutual covenants contained herein, and other good and valuable consideration, the parties hereby agree as follows:

ARTICLE 1
DEFINITIONS

1.1 Definitions.

In this Agreement, in addition to terms defined elsewhere in this Agreement, the following terms have the following meanings:

- 1.1.1 “**Affiliate**” has the meaning given to that term in the *Business Corporations Act* (Ontario).
- 1.1.2 “**Dealership**” means each of Trader’s motor vehicle dealers, wholesalers and/or dealerships that have subscribed to DSS.
- 1.1.3 “**DSS**” means Trader’s proprietary dealer SMART solutions suite of products and services.

- 1.1.4 “**Listing**” means, in the case of Trader Data, a Participating Dealership’s classified vehicle listing on the Syndication Partner Website and, in the case of the Syndication Partner Data, a Dealership’s classified vehicle listing on the Trader Website.
- 1.1.5 “**Participating Dealership**” means a Dealership who (i) has signed a Syndication Agreement, and (ii) through DSS, has authorized Trader to syndicate its Trader Data to the Syndication Partner Website.
- 1.1.6 “**Syndication Agreement**” means Trader’s syndication agreement, the form of which is attached hereto as Exhibit A and governs Trader’s syndication of the Dealership’s Trader Data to third party media.
- 1.1.7 “**Syndication Partner Data**” means the photographs, information and other available data howsoever relating to the motor vehicle inventory in the Prescribed Categories of Dealerships, including without limitation, the following data for each vehicle (and any marks, logos and other branding elements incorporated therein): Dealership ID; Dealership website link; year; make; model; colour (exterior and interior); style/trim; fuel type; engine size; transmission type; number of doors; features and any other descriptive elements; vehicle price; and the Tracking Details.
- 1.1.8 “**Syndication Support & Service Fee**” means, in a given month, the aggregate amount of \$5.00 (inclusive of any applicable taxes) per Participating Dealership during such month; provided that the Participating Dealership’s Trader Data has been syndicated to the Syndication Partner Site, all in accordance with this Agreement, for no less than one (1) full calendar month. For greater certainty, in the event a Participating Dealership is on-boarded to the Syndication Partner Site mid-month, the Syndication Support & Service Fee in respect of that particular Participating Dealership shall not apply in that month (nor shall it be pro-rated).
- 1.1.9 “**Term**” means the Initial Term and each Renewal Term, if applicable.
- 1.1.10 “**Tracking Fee**” means the fee payable to Trader by a Participating Dealership to syndicate its Trader Data to the Syndication Partner Website.
- 1.1.11 “**Trader Data**” means the photographs, information and other available data howsoever relating to the motor vehicle inventory in the Prescribed Categories of Participating Dealerships, including without limitation, the following data for each vehicle (and any marks, logos and other branding elements incorporated therein): Dealership ID; Dealership website link; year; make; model; colour (exterior and interior); style/trim; fuel type; engine size; transmission type; number of doors; features and any other descriptive elements; vehicle price; and the Tracking Details.
- 1.1.12 “**Trader Marks**” mean the Trader trademarks and logos, as may be provided by Trader to be used in connection with this Agreement.
- 1.1.13 “**Tracking Details**” means the tracking phone numbers and e-mail addresses included in any data delivered to the Syndication Partner Website or the Trader Website, as applicable.

ARTICLE 2
THE TRADER DATA FEEDS

2.1 License to the Trader Data.

2.1.1 Subject to the terms and conditions of this Agreement, Trader hereby grants to the Syndication Partner: (i) a royalty-free, non-exclusive right and license to use, reproduce, distribute, publicly display and publicly perform, during the Term, all or part of the Trader Data to create (and for inclusion in) the Listings and to otherwise facilitate the Listing process for Participating Dealerships; and (ii) in connection with any Listings, a royalty-free, non-exclusive, perpetual, irrevocable right to exercise the copyright, publicity, and database rights to the Trader Data therein in accordance with Section 2.5.

2.1.2 For certainty the license granted pursuant to Section 2.1.1. shall not:

2.1.2.1 permit the Syndication Partner to use, reproduce, distribute or publicly display the Trader Data other than solely through the Listings on the Syndication Partner Website; and

2.1.2.2 permit the Syndication Partner to providing or sublicense the Trader Data to any third party for any purpose whatsoever.

2.1.3 The Syndication Partner will not, and is expressly prohibited from using alternative means (including, but not limited to, the use of robots, spiders or scraping) to obtain the Data from Trader, other than as contemplated under this Agreement; provided however that, for greater certainty, Trader acknowledges and agrees that nothing in this Agreement will prevent or restrict the Syndication Partner from obtaining and using any data obtained from a source other than Trader.

2.2 Delivery and Format of Trader Data.

2.2.1 Trader will make the Trader Data available to the Syndication Partner, at no cost to the Syndication Partner, in the manner and format determined in the sole discretion of Trader. Trader will update the Trader Data made available to the Syndication Partner on a regular basis and will endeavour in good faith to provide updates no less frequently than daily. Trader acknowledges and agrees that in no event is the Syndication Partner obligated to access or use the Trader Data.

2.2.2 Trader shall notify the Syndication Partner in writing or by email in the event that a Participating Dealership has withdrawn its authorization to syndicate its Trader Data to the Syndication Partner Website (in which case, that Dealership will no longer be a Participating Dealership hereunder).

2.2.3 Trader will use commercially reasonable efforts to ensure that the Trader Data is accurate in that the Trader Data shall reflect the information provided to Trader by the applicable Participating Dealership. In the event an inaccuracy is brought to Trader's attention and, after investigation by Trader, it is determined that such inaccuracy is a data error caused by Trader, Trader will use commercially reasonable efforts to promptly correct such inaccuracy.

- 2.2.4 The Syndication Partner will use commercially reasonable efforts to ensure that after the Trader Data is provided to it by Trader, the Syndication Partner shall not cause any inaccuracies in the Trader Data that did not exist at the time the Trader Data was provided to the Syndication Partner by Trader. In the event an inaccuracy is brought to the Syndication Partner's attention and, after investigation by the Syndication Partner, it is determined that such inaccuracy is a data error caused by the Syndication Partner, the Syndication Partner will use commercially reasonable efforts to promptly correct such inaccuracy.
- 2.2.5 Trader has created, and will develop any additional software, web sites, methodology, processes, forms and equipment required to facilitate the access to, and transfer of, the Trader Data by and to the Syndication Partner in accordance with this Agreement. During the Term, the Tracking Details, together with all hardware, software and other systems necessary for the Syndication Partner to access and receive the Trader Data from Trader, will be free from material defects and operate in substantial conformity with generally accepted performance standards within the industry. The parties shall work cooperatively with each other on resolving technology issues that may arise in the performance of this Section 2.2.
- 2.2.6 The Syndication Partner may re-format the Trader Data to be presentable for display as (or within) Listings, as may be necessary to conform and adapt the Trader Data to the technical requirements of the Syndication Partner Website, connecting networks, devices, services or media; provided however that the Trader Data shall not be edited or altered by the Syndication Partner in a manner that misleads or distorts the original content.

2.3 Participating Dealership Fees

- 2.3.1 Trader will charge Participating Dealerships directly for any applicable Tracking Fees at a price to be determined in Trader's sole discretion subject to Section 2.3.2.
- 2.3.2 For greater certainty, the only fee payable to Trader by a Participating Dealership to syndicate its Trader Data to the Syndication Partner Website shall be the Tracking Fee. In no event will a Participating Dealership's Tracking Fee exceed (i) \$20/week, or (ii) the aggregate of any and all fees payable to Trader by a Participating Dealership to syndicate its Trader Data to any third party site.
- 2.3.3 Trader will provide and administer Syndication Agreements directly to Dealerships (i.e. prospective Participating Dealerships) for completion and execution by such Dealerships; provided however that Trader hereby expressly authorizes the Syndication Partner to provide, in the Syndication Partner's sole discretion, Syndication Agreements directly to Dealerships (i.e. prospective Participating Dealerships) for completion and execution by such Dealerships. Trader agrees that the Syndication Partner is in no way responsible for, and the Syndication Partner hereby disclaims any and all liability with respect to, the Syndication Agreements. Trader shall comply with the Syndication Partner's policies and instructions from time to time in connection with any use of and access to the Syndication Partner's Salesforce in connection with this Section 2.3.3. For purposes of this Section 2.3.3, "Salesforce" means the customer relationship management product of Salesforce.com Inc. and its Affiliates, including any related application (such as Adobe EchoSign for Salesforce) as licensed to (or for the benefit of) the Syndication Partner.
- 2.3.4 Without limitation to anything in Section 2.5, the Syndication Partner shall charge Participating Dealerships with respect to their Listings on the Syndication Partner Website

according to the schedule and terms as determined by Syndication Partner in its sole discretion.

- 2.3.5 The Syndication Partner shall pay the Syndication Support & Service Fee to Trader on a monthly basis. Upon completion of each month of the Term, Trader shall send to the Syndication Partner an invoice in the amount of the Syndication Support & Service Fee for the previously completed month, and Syndication Partner shall pay the Syndication Support & Service Fee for such previously completed month to Trader within thirty (30) days of receiving such invoice.

2.4 Support.

It is agreed and understood that Trader, on the one hand and, the Syndication Partner on the other hand, will each act in good faith and cooperate to their mutual benefit to enhance the Participating Dealerships efficiency and satisfaction by delivery, at each party's own cost and expense, of technical support services of high quality.

2.5 The Syndication Partner Policies.

Trader acknowledges and agrees that Participating Dealerships' use of the Syndication Partner Website, together with any Trader Data that is made available to the Syndication Partner and displayed as (or as part of) Listings, shall be subject to the Syndication Partner's then-current terms of use and privacy policy applicable to the Syndication Partner Website, it being further acknowledged that the Syndication Partner may amend such terms of use and privacy policy from time to time provided that such policy shall comply with applicable Canadian privacy legislation. Without limitation to the foregoing, the Syndication Partner reserves the unrestricted right to, without any liability, cancel, suspend or discontinue display of any Listing (or any Trader Data therein) on the Syndication Partner Website which violates the then-current terms of use or privacy policy applicable to the Syndication Partner Website.

2.6 Attribution and Tracking Details

- 2.6.1 Syndication Partner will provide attribution on each ad page in the form of a link that points to the original ad on autoTRADER.ca. These links must be crawlable by search engines and must not have the attribute of "nofollow" to ensure proper attribution is passed to the original autoTRADER.ca page. Where the data fee is provided from Trader, the Syndication Partner will provide attribution rights on each Syndication Partner vehicle detail page in the form of a logo link as approved by Trader that states "Info Provided by autoTrader.ca". Syndication Partner, at its own cost, will use commercially reasonable efforts to develop a working sample of the attribution required by the foregoing sentence for the vehicle detail page within thirty (30) days of the Effective Date.
- 2.6.2 Syndication Partner will add Trader supplied Tracking Details to each listing page for all Participating Dealerships and will not replace or augment any Tracking Details supplied by Trader during the term. In addition, Syndication Partner may provide its own Syndication Partner call tracking number for telephone calls ("**Syndication Partner Tracking Details**") that will be forwarded to the designated Trader call tracking number. Syndication Partner may not include its "this call may be recorded" feature for such Syndication Partner Tracking Details. Syndication Partner shall utilize the provided Trader email address from the Tracking Details for email leads on the Syndication Partner vehicle detail page email button.

2.7 Ownership.

As between the Syndication Partner and Trader: (i) the Syndication Partner retains all rights, title and interest in and to all intellectual property rights embodied in or associated with the Listings (except for the elements thereof owned or contributed by Trader, as set out in Section 2.7(ii)), the Syndication Partner Website, the Syndication Partner Marks, and any and all the Syndication Partner services; and (ii) except as expressly set out in this Agreement, Trader and its suppliers retain all rights, title and interest in and to all intellectual property rights embodied in or associated with the Trader Data, DSS, the Trader Marks and any and all Trader services. There are no implied licenses under this Agreement, and any rights not expressly granted hereunder are expressly reserved.

ARTICLE 3 REPRESENTATIONS, WARRANTIES AND COVENANTS

3.1 Covenants, Representations and Warranties of the Syndication Partner.

The Syndication Partner does hereby represent, warrant and covenant throughout the Term that: (i) it has all necessary corporate power, authority and capacity to execute, deliver and perform its obligations under this Agreement; (ii) it will comply with any applicable federal and provincial laws, regulations and ordinances in the performance of its obligations under this Agreement; (iii) it has performed the integration work necessary to cause Listings to be listed on the Syndication Partner Website; (iv) it is the owner, or a licensee with a right of sublicense, of all of the software, methodology, processes, forms and/or equipment used in connection with the Syndication Partner Website, and such items do not infringe the intellectual property rights of any person or entity; (v) it will not directly or indirectly with the assistance of any third party, at any time during the Term or thereafter, for any reason whatsoever, use (other than in accordance with the terms of this Agreement), copy, modify or reverse engineer any aspect of Trader's proprietary software (including the source code) relating to DSS; (vi) it has secured all rights necessary to transfer the Syndication Partner Data to Trader and to allow the Syndication Partner Data to be listed on the Trader Website; and (v) the Syndication Partner Data does not contain, and shall continue to remain free from, any viruses, disabling code or any other feature that is intended to damage, detrimentally interfere with, surreptitiously intercept or expropriate any system, data or personal information from Trader's internal systems.

3.2 Covenants, Representations and Warranties of Trader.

Trader does hereby represent, warrant and covenant throughout the Term that: (i) it has all necessary corporate power, authority and capacity to execute, deliver and perform its obligations under this Agreement, and its entering into of this Agreement and/or its performance hereunder will not violate terms of any other agreement that it has with a third party; (ii) it will comply with any applicable federal and provincial laws, regulations and ordinances in the performance of its obligations under this Agreement; (iii) it will not directly or indirectly with the assistance of any third party, for any reason whatsoever, use (other than in accordance with the terms of this Agreement), copy, modify or reverse engineer any aspect of the Syndication Partner's in house system or software (including the source code); (iv) it has secured all rights necessary to transfer the Trader Data to the Syndication Partner and to allow

the Trader Data to be listed on the Syndication Partner Site; and (v) the Trader Data does not contain, and shall continue to remain free from, any viruses, disabling code or any other feature that is intended to damage, detrimentally interfere with, surreptitiously intercept or expropriate any system, data or personal information from the Syndication Partner's internal systems.

3.3 Disclaimer.

EXCEPT AS EXPRESSLY STATED HEREIN, EACH PARTY DISCLAIMS ALL WARRANTIES AND CONDITIONS, EXPRESSED, IMPLIED OR STATUTORY, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. EXCEPT AS EXPRESSLY STATED HEREIN, THE SYNDICATION PARTNER WEBSITE, AND THE DATA ARE PROVIDED "AS IS". THE SYNDICATION PARTNER DOES NOT REPRESENT OR WARRANT THAT THE SYNDICATION PARTNER WEBSITE WILL OPERATE SECURELY OR WITHOUT INTERRUPTION.

ARTICLE 4 LIMITATION OF LIABILITY AND INDEMNIFICATION

4.1 Trader Indemnification.

Without limitation to anything otherwise set out in this Agreement, Trader hereby agrees to defend, indemnify and hold harmless the Syndication Partner, its Affiliates, their respective officers, directors, agents and employees, from any and all liabilities, losses, expenses, damages, and costs (including, without limitation, reasonable attorneys' fees) that may at any time be incurred by any of them by reason of any third party claims, actions, suits or proceedings ("**Claims**") relating to or arising out of: (i) breach by Trader of any of its representations, warranties or obligations hereunder; (ii) the infringement by the Trader Marks or the Trader Data of a patent, copyright, trademark right or other intellectual property right of a third party; and (iii) Trader's gross negligence, willful misconduct or fraudulent actions. For certainty, and notwithstanding any other provision in this Agreement, Trader shall not be liable for any inaccuracies in the Trader Data that are the result of a Participating Dealership providing inaccurate information.

4.2 The Syndication Partner Indemnification.

the Syndication Partner hereby agrees to defend, indemnify and hold harmless Trader, its Affiliates, and their respective officers, directors, agents and employees from any and all liabilities, losses, expenses, damages, and costs (including, without limitation, reasonable attorneys' fees) that may at any time be incurred by any of them by reason of any Claims relating to or arising out of: (i) breach by the Syndication Partner any of its representations, warranties or obligations hereunder; (ii) the Syndication Partner's gross negligence, willful misconduct or fraudulent actions; and (iii) the infringement by the Syndication Partner Marks or Syndication Partner Data of a copyright, trademark right or other intellectual property right of a third party. For certainty, and notwithstanding any other provision in this Agreement, Syndication Partner shall not be liable for any inaccuracies in the Syndication Partner Data that are the result of a Dealership providing inaccurate information.

4.3 Procedure.

Any claim for indemnification hereunder shall be subject to the following provisions: (i) each party shall be given prompt written notice of the claim by the indemnified party, provided that any delay in providing notice shall not relieve the indemnifying party of its indemnity obligations under this Agreement unless, and only to the extent, the indemnifying party was prejudiced by the delay; (ii) the indemnifying party shall have the right to control the defense and all negotiations relative to the settlement of any such claim, provided that it diligently undertakes such defense and that no settlement admitting liability on the part of the indemnified party or limiting the indemnified party's rights hereunder may be made without the express written consent of the indemnified party; and (iii) the indemnified party shall reasonably cooperate with the indemnifying party and its counsel at the indemnifying party's cost and expense.

4.4 Limitation of Liability.

EXCEPT WITH RESPECT TO CLAIMS THAT ARE SUBJECT TO INDEMNIFICATION UNDER SECTIONS 4.1 OR 4.2, AND FOR CLAIMS THAT ARISE OUT OF A BREACH OF CONFIDENTIALITY, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY: (i) WHETHER BASED IN CONTRACT, TORT, WARRANTY, OR ANY OTHER LEGAL OR EQUITABLE GROUNDS, FOR ANY LOSS OF THE INCOME, PROFIT OR SAVINGS OF THE OTHER PARTY OR ITS AFFILIATES, FOR ANY CONSEQUENTIAL DAMAGES, OR FOR ANY EXEMPLARY OR SPECIAL DAMAGES OF ANY KIND, EVEN IF THE OTHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES; OR (ii) IN AN AMOUNT GREATER THAN \$100,000.

ARTICLE 5 TERM AND TERMINATION

5.1 Term.

Subject to being earlier terminated pursuant to the provisions of this Agreement, the initial term of this Agreement shall begin on the Effective Date, and shall continue for a period of one (1) year (the "**Initial Term**"). This Agreement will thereafter automatically renew for additional successive one (1) year periods (each a "**Renewal Term**") unless either party provides written notice to the other of its intent not to renew at least thirty (30) days prior to the expiration of the Initial Term or the then-current Renewal Term.

5.2 Termination for Default and Otherwise.

Either party may terminate this Agreement: (i) if the other party breaches or is in default of any material obligation under this Agreement which default is incapable of cure or which, being capable of cure, has not been cured within ten (10) days after receipt of notice of such default (or such additional cure period as the non-defaulting party may authorize in its sole discretion); or (ii) immediately upon: (x) the admission by the other party in writing of the inability to pay debts generally as they become due or the taking of any corporate action tantamount to such admission; (y) the other party ceasing to do business as a going concern; or (z) the other party making any assignment for the benefit of creditors: or (iii) upon 30 days prior written notice to the other party.

5.3 Effect of Termination.

Upon expiration or early termination of the Agreement, all licenses granted hereunder will terminate unless such licenses are expressly stated as surviving. The Syndication Partner will destroy and/or return all copies of Trader Marks in its possession and discontinue the use of such Trader Marks in any form. Except as otherwise provided herein, any termination or expiration of this Agreement shall be without prejudice to any other rights or remedies a party may be entitled to under this Agreement or at law or in equity and shall not affect any accrued rights or liabilities of either party nor the coming into or continuance in force of any provision of this Agreement which is expressly or by implication intended to come into or continue in force on or after such termination or expiration (including Articles 1, 3, 4, 6 and 8 and Sections 2.1.2, 2.1.3, 2.7 and 5.3).

ARTICLE 6 CONFIDENTIAL INFORMATION

6.1 Confidential Information Defined.

For purposes hereof, "Confidential Information" shall mean all information or material which is either: (i) marked "Confidential," or other similar marking; or (ii) from all the relevant circumstances should reasonably be assumed to be confidential and proprietary. Notwithstanding the foregoing, Confidential Information shall not include information which: (A) is or becomes generally known to the public by any means other than a breach of the obligations of a receiving party; (B) was previously known to the receiving party or rightly received by the receiving party from a third party; or (C) is independently developed by the receiving party without reference to information derived from the other party.

6.2 Confidentiality Covenants.

6.2.1 Each party agrees to hold the other's Confidential Information in strict confidence, both during the Term and until the later of the date that is three (3) years after expiration or early termination of this Agreement or the date on which any such Confidential Information becomes publicly known and made generally available through no action or inaction of such party. The parties agree not to make each other's Confidential Information available in any form to any third party or to use each other's Confidential Information for any purpose other than the implementation of, and as specified in, this Agreement. This Article 6 supplements and does not supersede any existing non-disclosure or confidentiality agreements between the parties.

6.2.2 In the event any Confidential Information is required to be disclosed by a receiving party under the terms of a valid and effective subpoena or order issued by a court of competent jurisdiction, or by a demand or information request from an executive or administrative agency or other governmental authority, the receiving party requested or required to disclose such Confidential Information shall, unless prohibited by the terms of a subpoena, order, or demand, promptly notify the disclosing party of the existence, terms and circumstances surrounding such demand or request, shall consult with the disclosing party on the advisability of taking legally available steps to resist or narrow such demand or request, and, if disclosure of such Confidential Information is required, shall exercise its reasonable best efforts to narrow the scope of disclosure and obtain an order or other reliable assurance that confidential treatment will be accorded to such Confidential Information. To the extent the receiving party is prohibited from notifying the disclosing party of a subpoena, order or

demand, by the terms of same, the receiving party shall exercise its reasonable efforts to narrow the scope of disclosure.

ARTICLE 7 TRADEMARK LICENSE

7.1 Trademarks.

- 7.1.1 Subject to the terms and conditions of this Agreement, Trader hereby grants to the Syndication Partner a non-exclusive, royalty-free, non-transferable and non-assignable license to use the Trader Marks (to the extent provided) on the Syndication Partner Site or otherwise as may be agreed to by Trader in writing. Subject to the terms and conditions of this Agreement, the Syndication Partner hereby grants to Trader a non-exclusive, royalty-free, non-transferable and non-assignable license to use the Syndication Partner Marks (to the extent provided) as may be agreed to by the Syndication Partner in writing.
- 7.1.2 Either party may terminate any rights it has granted herein with respect to its trademarks if, in the party's reasonable discretion, the other party's use of its trademarks tarnishes, blurs or dilutes the quality associated with its trademarks or its associated goodwill; alternatively, instead of terminating the license in total, a party may specify that certain uses of the trademarks are no longer permitted. A party will use the other party's trademarks exactly in the form provided and in conformance with any trademark usage policies provided to it. Except as may be expressly agreed by the parties, neither party will form any combination marks with the other party's trademarks.
- 7.1.3 Neither party will take any action inconsistent with the other party's ownership of any trademarks, and any benefits accruing from use of such trademarks will automatically vest in the party granting the rights herein.

ARTICLE 8 GENERAL

8.1 Costs.

Except as otherwise set forth in this Agreement, each party will bear its own costs and expenses related to this Agreement.

8.2 Notices.

Any demand, notice or other communication to be given in connection with this Agreement shall be given in writing and shall be validly given if delivered personally, sent by fax or mailed by prepaid registered mail to the recipient as follows:

to Trader at: 405 The West Mall - Suite 110, Etobicoke, Ontario M9C 5J1. Fax: (888) 697-5792

to the Syndication Partner at: [XXXXXX]

8.3 Entire Agreement.

This Agreement, including its Schedules, and any written non-disclosure agreement previously executed by the parties, constitutes the entire agreement between the parties with respect to the subject matter hereof. This Agreement supersedes any and all agreements, understandings and representations made between the parties prior to the date hereof. This Agreement shall not be amended except by written agreement between the parties.

8.4 Force Majeure.

Neither party shall be held to have breached this Agreement if they are unable to fulfill their obligations by virtue of an event beyond their reasonable control, including without limitation, an act of God, civil unrest, war, terrorism, or seizure or expropriation of assets (other than that caused by the actions or omissions of a party).

8.5 Assignment.

Neither party may assign this Agreement or any part hereof without the prior written consent of the other party which consent may not be unreasonably withheld.

8.6 No Third Party Beneficiaries.

Except as set out in Article 4, the parties hereby acknowledge and agree that there will be no third party beneficiaries to this Agreement.

8.7 Binding Effect.

The provisions of this Agreement are for the benefit of and are binding upon the parties and their respective successors and permitted assigns.

8.8 Governing Law.

This Agreement shall be construed and interpreted in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein. Each of the parties hereby irrevocably attorn to the jurisdiction of the courts of the Province of Ontario with respect to any matters arising out of this Agreement.

8.9 Choice of Language.

The parties acknowledge that they have required that this Agreement, as well as any documents, notices and legal proceedings executed, given or instituted pursuant hereto or relating directly or indirectly hereto be drawn up in English. *Les parties reconnaissent avoir exigé la rédaction en anglais de la présente convention, ainsi que tous les documents exécutés, avis donnés et procédures judiciaires intentées directement ou indirectement à la suite ou relativement à la présente convention.*

8.10 Publicity.

No press releases or general public announcements shall be made without the mutual consent of the parties.

8.11 Independent Contractors.

This Agreement does not create, and nothing contained in this Agreement will be deemed to establish a joint venture between the parties, or the relationship of employer-employee, partners, principal-agent or the like. Further, neither party will have the power to bind the other without the other's prior written consent, nor make any representation that it has any such power.

8.12 Counterparts.

This Agreement may be executed in two counterparts, each of which so executed shall be deemed to be an original and such counterparts when taken together shall constitute one and the same original agreement that shall be binding on the parties.

IN WITNESS WHEREOF, the parties have duly executed this Agreement as of the Effective Date.

XXX

TRADER CORPORATION

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Schedule A

Trader Dealership Syndication Agreement

Letter of Agreement for Content Syndication - Data Transfer (the "Agreement")

<Date>

Between

Trader Corporation ("Trader")
110-405 West Mall
Etobicoke, ON

<Dealer Name> ("Dealer")
<Dealer Address>
<City, Province>

Trader and Dealer enter into this Agreement to govern the delivery of the Dealer's automobile listings ("Dealer Data") as requested by Dealer, to be republished on Dealer's own website or on Trader-approved 3rd party websites or media. Licensing and other fees may apply for the delivery of data to designated (and Trader approved sites) 3rd party sites. Dealer will be solely responsible for payment of any fees charged by any third party in connection with the republication of the Dealer Data. Trader only agrees to use its best efforts to provide the requested Dealer Data, and takes no responsibility for providing related technical or other support. It is the Dealer's sole responsibility to

Terms

- This Agreement incorporates by reference the terms of the Trader Master Services Agreement (the "MSA"), which the Dealer entered into on [DATE] to govern their relationship with Trader.
- Within a reasonable time after receiving a request to do so from Dealer, Trader will provide an Internet-accessible means by which Dealer (or Dealer's agents or service providers) may download the Dealer Data in a computer readable format (the "Data Feed"). Trader grants Dealer a non-exclusive, revocable license to republish the Dealer Data on Dealer's own website.
- If Dealer wishes to republish the Dealer Data via any 3rd party website or other medium, Dealer must first obtain Trader's approval of each 3rd party website or medium. (3rd party websites and media approved by Trader shall be referred to in this Agreement as "Approved 3rd Party Media", and the parties who publish Approved 3rd Party Media shall be referred to as "Approved 3rd Parties") Dealer Data may not be republished anywhere other than on the Dealer's website or on Approved 3rd Party Media. Trader may charge a fee for republication of the Dealer Data on Approved 3rd Party Media, and Dealer agrees to pay all such fees to Trader in a timely fashion.
- Publication of the Dealer Data anywhere other than Dealer's website and Approved 3rd Party Media shall result in immediate termination of this Agreement, revocation of the license to use the Dealer Data, and may result in harm to Trader for which Dealer shall be liable. Dealer accepts all responsibility and liability for any misuse, resale, modification, or unauthorized republication of the Dealer Data by Approved 3rd Parties, or Dealer's agents or service providers.
- Trader will use its best efforts to update the Dealer Data available through the Data Feed daily. The Dealer Data shall consist of the Dealer's individual vehicle listing records ("Vehicle Listings"), which may contain the following elements: Record Identifier, Year, Make, Model, Trim, Price, Description, VIN (if available), and one or more photos in low resolution jpeg format. Dealer may not modify these photos in any way, including by removing any watermarks, metadata, or other identifiers.
- Dealer acknowledges that the Dealer Data in aggregate form, and the individual photos and textual or other elements of the Dealer Data taken individually are proprietary works owned by Trader, and protected under copyright and other intellectual property law. All Dealer Data is and shall remain the sole property of Trader.
- Vehicle Listings may only be republished on Dealer's website or Approved 3rd Party Media for the limited time required to facilitate the sale of that vehicle. Dealer must ensure that no Vehicle Listing remains available via the Dealer's website or Approved 3rd Party Media for longer than 60 days.

- This Agreement shall remain in force for an initial period of 1 year with automatic renewal for successive 1 year terms, unless thirty (30) days written notice of cancellation is given by either party, and unless abuse of originating data, or photos occurs, in which case Trader may terminate this Agreement immediately and without notice.
- Both parties acknowledge that their respective logos, trademarks and trade names remain their sole property and unauthorized use by Dealer of any Trader intellectual property shall result in the termination of this agreement.
- Dealer is solely responsible for all aspects (technical and otherwise) of republishing the Dealer Data. Trader shall merely provide the Data Feed, and shall not be responsible for providing any technical or other support to Dealer in connection with this Agreement.
- Trader shall have no liability to Dealer or any third party for claims related to Dealer's use of or inability to use the Dealer Data or the Data Feed, or for any claims relating to the accuracy, reliability, or integrity of the Dealer Data or any Vehicle Listing or other element of the Dealer Data. The Dealer Data and the Data Feed are provided on an "as-is" and "as available" basis, and Dealer's use of same shall be at Dealer's sole risk. The provisions of the MSA which exclude all warranties and limit Trader's Liability shall apply to this Agreement and the provision of the Dealer Data and the Data Feed.
- The nature and terms of this Agreement are confidential. Any disclosure or communications without the written consent of Trader will result in the termination of this agreement

Signatures below indicate the acceptance of all terms of this agreement.

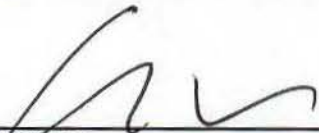
<Trader Sales Director Signature>

Trader Corporation

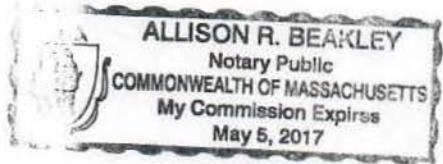
<Dealer Principle Name & Signature>

<Dealership Name>

THIS IS EXHIBIT "C" MENTIONED AND REFERRED TO IN THE AFFIDAVIT OF MARTHA BLUE SWORN BEFORE ME THIS 3RD DAY OF MARCH, 2016.



Notary Public



SUBSCRIBE NOW

Log In

BUSINESS DAY

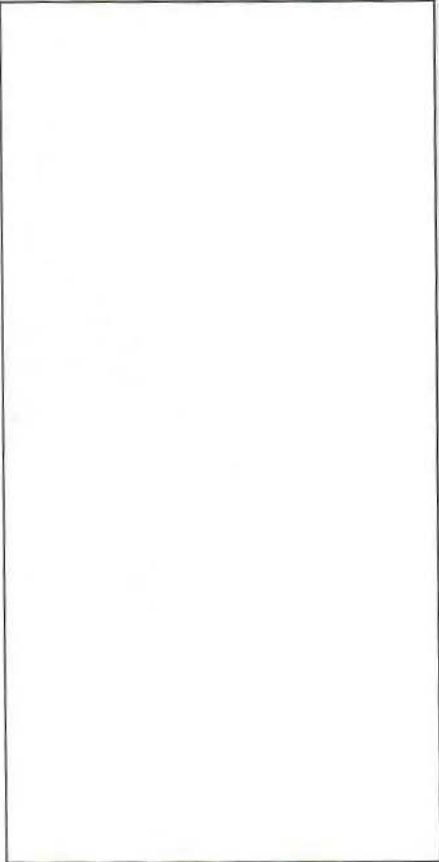
The Dirty Little Secrets of Search

By DAVID SEGAL FEB. 12, 2011



Photo illustration by The New York Times

Advertisement



Email

PRETEND for a moment that you are [Google's](#) search engine.

Share

Someone types the word “dresses” and hits enter. What will be the very first result?

Tweet

There are, of course, a lot of possibilities. Macy’s comes to mind. Maybe a specialty chain, like J. Crew or the Gap. Perhaps a Wikipedia entry on the history of hemlines.

Save

More

O.K., how about the word “bedding”? Bed Bath & Beyond seems a candidate. Or Wal-Mart, or perhaps the bedding section of [Amazon.com](#).

“Area rugs”? Crate & Barrel is a possibility. Home Depot, too, and Sears, Pier 1 or any of those Web sites with “area rug” in the name, like [arearugs.com](#).

You could imagine a dozen contenders for each of these searches. But in

the last several months, one name turned up, with uncanny regularity, in the No. 1 spot for each and every term:

[J. C. Penney.](#)

The company bested millions of sites — and not just in searches for dresses, bedding and area rugs. For months, it was consistently at or near the top in searches for “skinny jeans,” “home decor,” “comforter sets,” “furniture” and dozens of other words and phrases, from the blandly generic (“tablecloths”) to the strangely specific (“grommet top curtains”).



Doug Pierce of Blue Fountain Media examined J. C. Penney's ranking on Google. His analysis suggested a world of intrigue in the search business. Suzanne DeChillo/The New York Times

This striking performance lasted for months, most crucially through the holiday season, when there is a huge spike in online shopping. J. C. Penney even beat out the sites of manufacturers in searches for the products of those manufacturers. Type in “Samsonite carry on luggage,” for instance, and Penney for months was first on the list, ahead of [Samsonite.com](#).

With more than 1,100 stores and \$17.8 billion in total revenue in 2010, Penney is certainly a major player in American retailing. But Google's stated goal is to sift through every corner of the Internet and find the most important, relevant Web sites.

Does the collective wisdom of the Web really say that Penney has the most essential site when it comes to dresses? *And* bedding? *And* area rugs? And dozens of other words and phrases?

The New York Times asked an expert in online search, Doug Pierce of [Blue Fountain Media](#) in New York, to study this question, as well as Penney's astoundingly strong search-term performance in recent months. What he found suggests that the digital age's most mundane act, the Google search, often represents layer upon layer of intrigue. And the intrigue starts in the sprawling, subterranean world of “black hat” optimization, the dark art of raising the profile of a Web site with methods that Google considers tantamount to cheating.

Despite the cowboy outlaw connotations, black-hat services are not illegal, but trafficking in them risks the wrath of Google. The company draws a [pretty thick line](#) between techniques it considers deceptive and “white hat”

approaches, which are offered by hundreds of consulting firms and are legitimate ways to increase a site's visibility. Penney's results were derived from methods on the wrong side of that line, says Mr. Pierce. He described the optimization as the most ambitious attempt to game Google's search results that he has ever seen.

"Actually, it's the most ambitious attempt I've ever heard of," he said. "This whole thing just blew me away. Especially for such a major brand. You'd think they would have people around them that would know better."

TO understand the strategy that kept J. C. Penney in the pole position for so many searches, you need to know how Web sites rise to the top of Google's results. We're talking, to be clear, about the "organic" results — in other words, the ones that are not paid advertisements. In deriving organic results, Google's algorithm takes into account dozens of criteria, many of which the company will not discuss.

But it has described one crucial factor in detail: links from one site to another.

If you own a Web site, for instance, about Chinese cooking, your site's Google ranking will improve as other sites link to it. The more links to your site, especially those from other Chinese cooking-related sites, the higher your ranking. In a way, what Google is measuring is your site's popularity by polling the best-informed online fans of Chinese cooking and counting their links to your site as votes of approval.

But even links that have nothing to do with Chinese cooking can bolster your profile if your site is barnacled with enough of them. And here's where the strategy that aided Penney comes in. Someone paid to have thousands of links placed on hundreds of sites scattered around the Web, all of which lead directly to JCPenney.com.

Who is that someone? A spokeswoman for J. C. Penney, Darcie Brossart, says it was not Penney.

"J. C. Penney did not authorize, and we were not involved with or aware of, the posting of the links that you sent to us, as it is against our natural search policies," Ms. Brossart wrote in an e-mail. She added, "We are working to have the links taken down."

The links do not bear any fingerprints, but nothing else about them was particularly subtle. Using an online tool called [Open Site Explorer](#), Mr. Pierce found 2,015 pages with phrases like "casual dresses," "evening dresses," "little black dress" or "cocktail dress." Click on any of these phrases on any of these 2,015 pages, and you are bounced directly to the main page for dresses on JCPenney.com.

Some of the 2,015 pages are on sites related, at least nominally, to clothing. But most are not. The phrase "black dresses" and a Penney link were tacked to the bottom of a site called nuclear.engineeringaddict.com. "Evening dresses" appeared on a site called casino-focus.com. "Cocktail dresses" showed up on bulgariapropertyportal.com. "Casual dresses" was on a site called elistofbanks.com. "Semi-formal dresses" was pasted, rather incongruously, on usclettermen.org.

There are links to JCPenney.com's dresses page on sites about diseases, cameras, cars, dogs, aluminum sheets, travel, snoring, diamond drills, bathroom tiles, hotel furniture, online games, commodities, fishing, Adobe

Flash, glass shower doors, jokes and dentists — and the list goes on.

Some of these sites seem all but abandoned, except for the links. The greeting at myflhomebuyer.com sounds like the saddest fortune cookie ever: “Sorry, but you are looking for something that isn’t here.”

When you read the enormous list of sites with Penney links, the landscape of the Internet acquires a whole new topography. It starts to seem like a city with a few familiar, well-kept buildings, surrounded by millions of hovels kept upright for no purpose other than the ads that are painted on their walls.

Exploiting those hovels for links is a Google no-no. The company’s guidelines warn against using tricks to improve search engine rankings, including what it refers to as “link schemes.” The penalty for getting caught is a pair of virtual concrete shoes: the company sinks in Google’s results.

Often drastically. In 2006, Google announced that it had caught BMW using a black-hat strategy to bolster the company’s German Web site, BMW.de. That site was temporarily given what the BBC at the time called “the death penalty,” stating that it was “removed from search results.”

BMW acknowledged that it had set up “doorway pages,” which exist just to attract search engines and then redirect traffic to a different site. The company at the time said it had no intention of deceiving users, adding “if Google says all doorway pages are illegal, we have to take this into consideration.”

J. C. Penney, it seems, will not suffer the same fate. But starting Wednesday, it was the subject of what Google calls “corrective action.”

Last week, The Times sent Google the evidence it had collected about the links to JCPenney.com. Google promptly set up an interview with Matt Cutts, the head of the Webspam team at Google, and a man whose every speech, [blog post](#) and [Twitter update](#) is parsed like papal encyclicals by players in the search engine world.

“I can confirm that this violates our guidelines,” said Mr. Cutts during an hourlong interview on Wednesday, after looking at a list of paid links to JCPenney.com.

He said Google had detected previous guidelines violations related to JCPenney.com on three occasions, most recently last November. Each time, steps were taken that reduced Penney’s search results — Mr. Cutts avoids the word “punished” — but Google did not later “circle back” to the company to see if it was still breaking the rules, he said.

He and his team had missed this recent campaign of paid links, which he said had been up and running for the last three to four months.

“Do I wish our system had detected things sooner? I do,” he said. “But given the one billion queries that Google handles each day, I think we do an amazing job.”

Mr. Cutts sounded remarkably upbeat and unperturbed during this conversation, which was a surprise given that we were discussing a large, sustained effort to snooker his employer. Asked about his zenlike calm, he said the company strives not to act out of anger. You get the sense that Mr. Cutts and his colleagues are acutely aware of the singular power they wield

as judge, jury and appeals panel, and they're eager to project an air of maturity and judiciousness.

That said, he added, "I don't think I could do my job well if in some sense I was not offended by things that were bad for Google users."

"Am I happy this happened?" he later asked. "Absolutely not. Is Google going to take strong corrective action? We absolutely will."

And the company did. On Wednesday evening, Google began what it calls a "manual action" against Penney, essentially demotions specifically aimed at the company.

At 7 p.m. Eastern time on Wednesday, J. C. Penney was still the No. 1 result for "Samsonite carry on luggage."

Two hours later, it was at No. 71.

At 7 p.m. on Wednesday, Penney was No. 1 in searches for "living room furniture."

By 9 p.m., it had sunk to No. 68.

In other words, one moment Penney was the most visible online destination for living room furniture in the country.

The next it was essentially buried.

PENNEY reacted to this instant reversal of fortune by, among other things, firing its search engine consulting firm, [SearchDex](#). Executives there did not return e-mail or phone calls.

Penney also issued a statement: "We are disappointed that Google has reduced our rankings due to this matter," Ms. Brossart wrote, "but we will continue to work actively to retain our high natural search position."

She added that while the collection of links surely brought in additional revenue, it was hardly a bonanza. Just 7 percent of JCPenney.com's traffic comes from clicks on organic search results, she wrote. A far bigger source of profits this holiday season, she stated, came from partnerships with companies like Yahoo and Time Warner, from new mobile applications and from in-store kiosks.

Search experts, however, say Penney likely reaped substantial rewards from the paid links. If you think of Google as the entrance to the planet's largest shopping center, the links helped Penney appear as though it was the first and most inviting spot in the mall, to millions and millions of online shoppers.



Google's spam cop, Matt Cutts, was not pleased about a campaign to make JCPenney.com seem more popular. Thor Swift for The New York Times

How valuable was that? [A study](#) last May by Daniel Ruby of Chitika, an online advertising network of 100,000 sites, found that, on average, 34 percent of Google's traffic went to the No. 1 result, about twice the percentage that went to No. 2.

The [Keyword Estimator](#) at Google puts the number of searches for "dresses" in the United States at 11.1 million a month, an average based on 12 months of data. So for "dresses" alone, Penney may have been attracting roughly 3.8 million visits every month it showed up as No. 1. Exactly how many of those visits translate into sales, and the size of each sale, only Penney would know.

But in January, the company was crowing about its online holiday sales. Kate Coultas, a company spokeswoman, wrote to a reporter in January, "Internet sales through [jcp.com](#) posted strong growth in December, with significant increases in traffic and orders for the key holiday shopping periods of the week after Thanksgiving and the week before Christmas."

There was considerable pressure from investors for Penney to deliver strong holiday results. It has been struggling through one of the more trying times of its century of retailing. The \$17.8 billion in revenue it reported last year is the exact same figure it reported in 2001. It announced in January that it would close a handful of underperforming stores, as well as two of its five call centers and 19 outlets that sell excess catalog merchandise.

Adding to the company's woes is the demise of its catalog business. Penney has phased out what it called its Big Book and poured money into its Web site. But so far, the loss of the catalog has not been offset by the expansion of the Web site. At its peak, the catalog brought in about \$4 billion in revenue. In 2009, the site brought in \$1.5 billion.

"For the last 35 years, Penney has tried to be accepted as a department store, and during unusually good times, it does very well," said Bernard Sosnick, an analyst at Gilford Securities. "But in bad times, it gets punished by shoppers who pull back after having spent aspirationally."

MANY owners of Web sites with Penney links seem to relish their

unreachability. But there were exceptions, and they included [cocaman.ch](#). (“Geekness — closer to the world” is the cryptic header atop the site.) It turned out to be owned and run by Corsin Camichel, a chatty 25-year-old I.T. security analyst in Switzerland.

The word “dresses” appears in a small collection of links in the middle of a largely blank Cocaman page. Asked about that link, Mr. Camichel said his records show that it turned up on his site last April, though he said it might have been earlier than that.

The link came through a Web site, [TNX.net](#), which pays Mr. Camichel with TNX points, which he then trades for links that drive traffic to his other sites, like [cookingutensils.net](#). He earns money when people visit that site and click on the ads. He could also, he said, get cash from TNX. Currently, Cocaman is home to 403 links, all of them placed there by TNX on behalf of clients.

“You do pretty well,” he wrote, referring to income from his links trading. “The thing is, the more you invest (time and money) the better results you get. Right now I get enough to buy myself new test devices for my Android apps (like \$150/month) with zero effort. I have to do nothing. Ads just sit there and if people click, I make money.”

Efforts to reach TNX itself last week via e-mail were not successful.

Interviewing a purveyor of black-hat services face-to-face was a considerable undertaking. They are a low-profile bunch. But a link-selling specialist named Mark Stevens — who says he had nothing to do with the Penney link effort — agreed to chat. He did so on the condition that his company not be named, a precaution he justified by recounting what happened when the company apparently angered Google a few months ago.

“It was my fault,” Mr. Stevens said. “I posted a job opening on a Stanford Engineering alumni mailing list, and mentioned the name of our company and a brief description of what we do. I think some Google employees saw it.”

In a matter of days, the company could not be found in a Google search.

“Literally, you typed the name of the company into the search box and we did not turn up. Anywhere. You’d find us if you knew our Web address. But in terms of search, we just disappeared.”

The company now operates under a new name and with a profile that is low even in the building where it claims to have an office. The landlord at the building, a gleaming, glassy midrise next to Route 101 in Redwood City, Calif., said she had never heard of the company.

Mr. Stevens agreed to meet in mid-January for a dinner paid for by The Times. Asked to pick a “fine restaurant” in his neighborhood, he rather cheekily selected a modern French bistro in Palo Alto offering an eight-course prix fixe meal for \$118. Liquid nitrogen and “fairy tale pumpkin” were two of the featured ingredients.

Mr. Stevens turned out to be a boyish-looking 31-year-old native of Singapore. (Stevens is the name he uses for work; he says he has a Chinese last name, which he did not share.) He speaks with a slight accent and in an animated hush, like a man worried about eavesdroppers. He describes his works with the delighted, mischievous grin of a sophomore who just

hid a stink bomb.

“The key is to roll the campaign out slowly,” he said as he nibbled at seared duck foie gras. “A lot of companies are in a rush. They want as many links as we can get them as fast as possible. But Google will spot that. It will flag a Web site that goes from zero links to a few hundred in a week.”

The hardest part about the link-selling business, he explained, is signing up deep-pocketed mainstream clients. Lots of them, it seems, are afraid they’ll get caught. Another difficulty is finding quality sites to post links. Whoever set up the JCPenney.com campaign, he said, relied on some really low-rent, spammy sites — the kind with low PageRanks, as Google calls its patented measure of a site’s quality. The higher the PageRank, the more “Google juice” a site offers others to which it is linked.

“The sites that TNX uses mostly have low PageRanks,” Mr. Stevens said.

Mr. Stevens said that Web site owners, or publishers, as he calls them, get a small fee for each link, and the transaction is handled entirely over the Web.

Publishers can reject certain keywords and links — Mr. Stevens said some balked at a lingerie link — but for the most part the system is on a kind of autopilot. A client pays Mr. Stevens and his colleagues for links, which are then farmed out to Web sites. Payment to publishers is handled via PayPal.

You might expect Mr. Stevens to have a certain amount of contempt for Google, given that he spends his professional life finding ways to subvert it. But through the evening he mentioned a few times that he’s in awe of the company, and the quality of its search engine.

So how does he justify all his efforts to undermine that engine?

“I think we need to make a distinction between two different kinds of searches — informational and commercial,” he said. “If you search ‘cancer,’ that’s an informational search and on those, Google is amazing. But in commercial searches, Google’s results are really polluted. My own personal experience says that the guy with the biggest S.E.O. budget always ranks the highest.”

To Mr. Stevens, S.E.O. is a game, and if you’re not paying black hats, you are losing to rivals with fewer compunctions.

WHY did Google fail to catch a campaign that had been under way for months? One, no less, that benefited a company that Google had already taken action against three times? And one that relied on a collection of Web sites that were not exactly hiding their spamminess?

Mr. Cutts emphasized that there are 200 million domain names and a mere 24,000 employees at Google.

“Spammers never stop,” he said. Battling those spammers is a never-ending job, and one that he believes Google keeps getting better and better at.

Here’s another hypothesis, this one for the conspiracy-minded. Last year, Advertising Age obtained a Google document that listed some of its largest advertisers, including AT&T, eBay and yes, J. C. Penney. The company, this document said, spent \$2.46 million a month on paid Google search ads — the kind you see next to organic results.

Is it possible that Google was willing to countenance an extensive black-hat campaign because it helped one of its larger advertisers? It's the sort of question that European Union officials are now studying in an investigation of possible antitrust abuses by Google.

Investigators have been asking advertisers in Europe questions like this: "Please explain whether and, if yes, to what extent your advertising spending with Google has ever had an influence on your ranking in Google's natural search." And: "Has Google ever mentioned to you that increasing your advertising spending could improve your ranking in Google's natural search?"

Asked if Penney received any breaks because of the money it has spent on ads, Mr. Cutts said, "I'll give a categorical denial." He then made an impassioned case for Google's commitment to separating the money side of the business from the search side. The former has zero influence on the latter, he said.

"If you asked me for the names of five people in advertising engineering, I don't think I could give you the names," he said. "There is a very long history at Google of saying 'We are not going to worry about short-term revenue.'" He added: "We rely on the trust of our users. We realize the responsibility that we have to our users."

He noted, too, that before The Times presented evidence of the paid links to JCPenney.com, Google had just begun to roll out an algorithm change that had a negative effect on Penney's search results. (The tweak affected "how we trust links," Mr. Cutts said, declining to elaborate.)

True, JCPenney.com's showing in Google searches had declined slightly by Feb. 8, as the algorithm change began to take effect. In "comforter sets," Penney went from No. 1 to No. 7. In "sweater dresses," from No. 1 to No. 10.

But the real damage to Penney's results began when Google started that "manual action." The decline can be charted: On Feb. 1, the average Penney position for 59 search terms was 1.3.

On Feb. 8, when the algorithm was changing, it was 4.

By Feb. 10, it was 52.

MR. CUTTS said he did not plan to write about Penney's situation, as [he did](#) with BMW in 2006. Rarely, he explained, does he single out a company publicly, because Google's goal is to preserve the integrity of results, not to embarrass people.

"But just because we don't talk about it," he said, "doesn't mean we won't take strong action."

A version of this article appears in print on February 13, 2011, on page BU1 of the New York edition with the headline: The Dirty Little Secrets of Search. Order Reprints | Today's Paper | Subscribe

TRENDING

1. [The Work Issue: What Google Learned From Its Quest to Build the...](#)



- 2. [Editorial: Mrs. Clinton, Show Voters Those Transcripts](#) 
- 3. [What It's Really Like to Work in Hollywood \(*If you're not a straight...](#) 
- 4. [We Should Probably Have a Conversation About 'Damn, Daniel'](#) 
- 5. [In an Improving Economy, Places in Distress](#) 
- 6. [Tech Fix: Tips and Myths About Extending Smartphone Battery Life](#) 
- 7. [Donald Trump to Foreign Workers for Florida Club: You're Hired](#) 
- 8. [University of Missouri Fires Melissa Click, Who Tried to Block Journalist...](#) 
- 9. [First Draft: 2 Ex-Presidents of Mexico Say No Way Country Is Paying for...](#) 
- 10. [Your Thursday Evening Briefing: Donald Trump, iPhone, Academy...](#) 

[View More Trending Stories »](#)

[Go to Home Page »](#)

NEWS

- [World](#)
- [U.S.](#)
- [Politics](#)
- [N.Y.](#)
- [Business](#)
- [Tech](#)
- [Science](#)
- [Health](#)
- [Sports](#)
- [Education](#)
- [Obituaries](#)
- [Today's Paper](#)
- [Corrections](#)

OPINION

- [Today's Opinion](#)
- [Op-Ed Columnists](#)
- [Editorials](#)
- [Contributing Writers](#)
- [Op-Ed Contributors](#)
- [Opinionator](#)
- [Letters](#)
- [Sunday Review](#)
- [Taking Note](#)
- [Room for Debate](#)
- [Public Editor](#)
- [Video: Opinion](#)

ARTS

- [Today's Arts](#)
- [Art & Design](#)
- [ArtsBeat](#)
- [Books](#)
- [Dance](#)
- [Movies](#)
- [Music](#)
- [N.Y.C. Events Guide](#)
- [Television](#)
- [Theater](#)
- [Video Games](#)
- [Video: Arts](#)

LIVING

- [Automobiles](#)
- [Crossword](#)
- [Food](#)
- [Education](#)
- [Fashion & Style](#)
- [Health](#)
- [Jobs](#)
- [Magazine](#)
- [N.Y.C. Events Guide](#)
- [Real Estate](#)
- [T Magazine](#)
- [Travel](#)
- [Weddings & Celebrations](#)

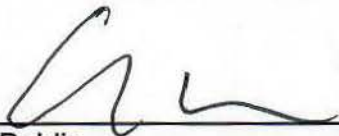
LISTINGS & MORE

- [Classifieds](#)
- [Tools & Services](#)
- [Times Topics](#)
- [Public Editor](#)
- [N.Y.C. Events Guide](#)
- [Blogs](#)
- [Multimedia](#)
- [Photography](#)
- [Video](#)
- [NYT Store](#)
- [Times Journeys](#)
- [Subscribe](#)
- [Manage My Account](#)

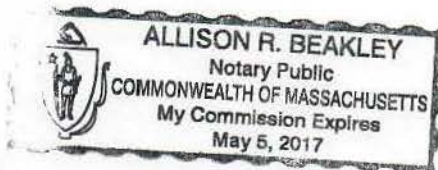
SUBSCRIBE

- Times Insider**
- Home Delivery**
- Digital Subscriptions**
- NYT Opinion**
- Crossword**
- [Email Newsletters](#)
- [Alerts](#)
- [Gift Subscriptions](#)
- [Corporate Subscriptions](#)
- [Education Rate](#)
- [Mobile Applications](#)
- [Replica Edition](#)
- [International New York Times](#)

THIS IS EXHIBIT "D" MENTIONED AND REFERRED TO IN THE AFFIDAVIT OF MARTHA BLUE SWORN BEFORE ME THIS 3RD DAY OF MARCH, 2016.



Notary Public



From: [Jonathan Colombo](#)
To: pruby@goodmans.ca
Cc: [Jennifer McKenzie](#); [Freedom Warne](#); [Shauna LaCombe](#)
Subject: Traders and CarGurus
Date: Thursday, December 17, 2015 10:10:15 AM

Peter,

[REDACTED]

[REDACTED] our client has, entirely without prejudice and without admission of any kind, pulled down photographs from numerous Canadian dealers. Our client has done this without seeing any evidence that your client actually owns the copyright in the 150,000 photographs mentioned in your December 2 letter, and despite your improper refusal to identify the dealers whose photographs were allegedly copied, which I mentioned is required for our client to identify the photographs in which Traders claims copyright as opposed to the photographs which our client obtained from numerous independent sources. In fact, your refusal to provide this information forced our client to take down photographs from certain Canadian dealers who indicated that they own the rights in the photographs. This has caused actual damage to CarGurus and to third parties. It also calls into question your client's assertion that it owns exclusive rights in these 150,000 photographs.

In view of your client's conduct, we are now consulting with Nikiforos Iatrou of WeirFoulds in respect of Traders' likely violations of the *Competition Act*, including CarGurus' options with respect to commencing proceedings under the Act and/or having the Competition Bureau initiate a formal inquiry and proceedings in respect of Traders' abusive and exclusionary conduct. In the meantime, if your client insists on commencing litigation, [REDACTED] we expect your client to identify each of the photographs in which your client claims copyright, the VINS for the vehicles shown in the photographs (which identifies the specific cars), and the dealer names, so that our client can determine whether it did in fact reproduce those photographs and if so where it obtained the photographs.

Finally, in answer to your request, we are authorized to accept service of the Statement of Claim provided that our client will have the usual 40 days to serve and file a Statement of Defence or bring any required motion.

Yours truly,


Jonathan

Jonathan Colombo, Partner

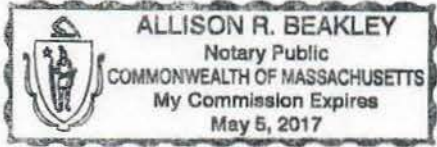
Bereskin & Parr LLP

Direct: 416.957.1613 | Office: 416.364.7311 | Fax: 416.361.1398 | jcolombo@bereskinparr.com

THIS IS EXHIBIT "E" MENTIONED AND REFERRED TO IN THE AFFIDAVIT OF MARTHA BLUE SWORN BEFORE ME THIS 3RD DAY OF MARCH, 2016.



Notary Public



[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

From: Jim Gogan <jgogan@cargurus.com>

Date: Friday, January 15, 2016 at 11:17 AM

To: Sam Zales <szales@cargurus.com>, Diego Sanson <dsanson@cargurus.com>

Cc: Jason Abrahams <jason@cargurus.com>, marty <marty@cargurus.com>, Sheila Carlson <sheila@cargurus.com>

Subject: First confirmed cancellation due to Trader feed issue

Hi Sam,

Lexington Motors is one of my paying customers who submitted their cancellation. Their feed suddenly shut off to us last week and now CarPages has confirmed that they removed the feed because it was a Trader feed and they are not allowed to re-syndicate the inventory over to us.

This is now the first case where we are losing a paying customer due to the Trader issue.

Regards,

Jimmy Gogan
Dealer Account Executive
CarGurus
[2 Canal Park, 4th Floor](#)
[Cambridge, MA 02141](#)
P: [617-466-3619](tel:617-466-3619)

www.cargurus.com
<http://ca.cargurus.com/>

Want to receive marketing best practices from CarGurus? Sign-up [here!](#)

From: Support
Date: Friday, January 15, 2016 at 10:09 AM
To: James Gogan
Subject: RE: Jimmy from CarGurus - Lexington Motors Feed

Good morning, Jimmy!

The feed to Car Gurus for Lexington Motors was removed here on January 8 as the dealer approved a feed from Auto Trader to Carpages. As per our agreement with Trader, Trader will not allow us to re-syndicate inventory that they send to us. Therefore, we had to remove the feed to Car Gurus.

Thank you,
Michelle

From: Jim Gogan [<mailto:jgogan@cargurus.com>]
Sent: January-14-16 6:34 PM
To: Support
Subject: Jimmy from CarGurus - Lexington Motors Feed

Hi Support,

Good afternoon!

I was wondering if you could please take a look at the feed for Lexington Motors out of Burnaby, BC as it has stopped being sent over to CarGurus. It is showing up as Inactive and I'm not sure why.

If you could please update me, I would really appreciate it!

Thank you!

Regards,

Jimmy Gogan
Dealer Account Executive
CarGurus
[2 Canal Park, 4th Floor](#)
[Cambridge, MA 02141](#)
P: [617-466-3619](tel:617-466-3619)

www.cargurus.com

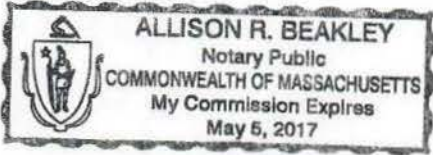
<http://ca.cargurus.com/>

Want to receive marketing best practices from CarGurus? Sign-up [here!](#)

THIS IS EXHIBIT "F" MENTIONED AND REFERRED TO IN THE AFFIDAVIT OF MARTHA BLUE SWORN BEFORE ME THIS 3RD DAY OF MARCH, 2016.



Notary Public



[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

From: Scott Davidson <srdavidson@stop23.com>
Date: Wednesday, December 16, 2015 11:26 AM
To: CarGurus iMac <sheila@cargurus.com>
Subject: FW: stop 23

Hi Sheila

Here is what I have found out so far

Looks like you guys need to get a agreement in place with trader

From: Chris Hill [<mailto:Chris.Hill@trader.ca>]

Sent: December-16-15 11:01 AM

To: Scott Davidson

Subject: RE: stop 23

We typically can export to ANYONE, as long as there's been no problem with signing an agreement on either side.

Let me look into your syndication feeds and make sure it wouldn't cause a problem.

Chris Hill | Online Strategy Consultant

autoTRADER.ca

Mobile: 519.546.4296

Centre of Excellence: 1.877.414.2030

Email: chris.hill@trader.ca

Web: www.tradercorporation.com



Notice : This e-mail may be privileged and/or confidential, and the sender does not waive any related rights and obligations. Any distribution, use or copying of this e-mail or the information it contains by other than an intended recipient is unauthorized. If you received this e-mail in error, please advise me by return e-mail or otherwise immediately.

From: Scott Davidson [<mailto:srdavidson@stop23.com>]

Sent: December-16-15 9:50 AM

To: Chris Hill

Subject: RE: stop 23

If I reverse the push ,, example from carpages to Trader and then have carpages push everything to all partys,, How would that effect Trader.??? Or our website ??

Because there are multiple platforms rolling out this year that will require syndication for retail and wholesale

From: Chris Hill [<mailto:Chris.Hill@trader.ca>]

Sent: December-16-15 9:27 AM

To: Scott Davidson

Subject: Re: stop 23

Hey Scott,

It's nothing at all to do with ownership, I can assure you.

You're not the first dealer to ask. Here is the story from management: When CarGurus came to

the market, Trader approached them to create a corporate syndication agreement, and they refused. No idea as to why. Your CarGurus rep might not have known that.

You can have them pull the content from your website if they're able - but we can't send it directly without an agreement in place.

Trust me, I'd prefer if we had an agreement with them. Lot less hassle if we did.

Regards,

Chris Hill | Online Strategy Consultant
Southwestern Ontario
autoTRADER.ca
519.546.4296

On Dec 16, 2015, at 9:11 AM, Scott Davidson <srdavidson@stop23.com> wrote:

Hi Chris

The other day I had Car gurus reach out to auto trader to request an inventory push,,,Auto trader said NO

I pay to syndicate my inventory,, so why cant it be done ???

Does Trader actually believe that they own my content ?? If so were is it written in contract

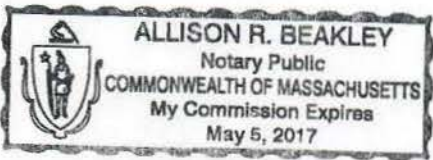
Please respond

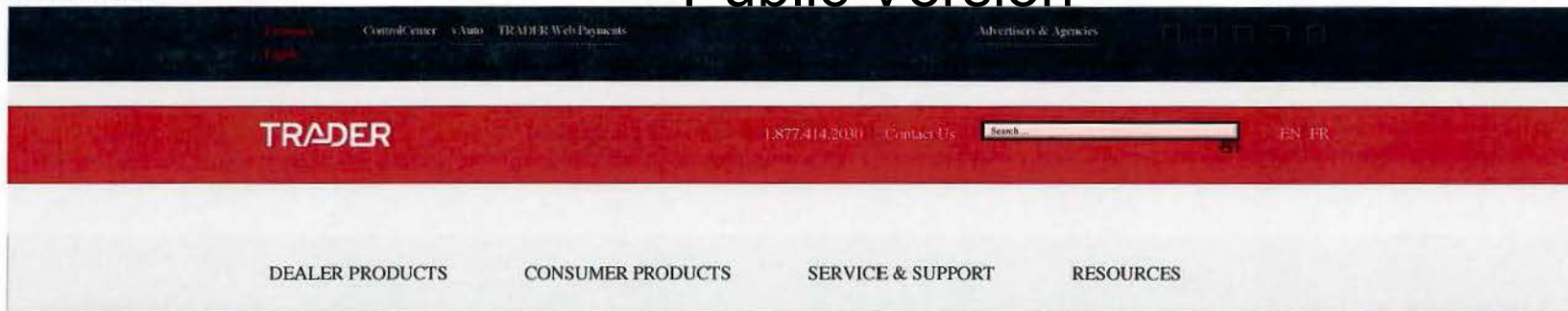
Scott Davidson
President
Stop 23 Auto Sales Ltd.
Orangeville Motors
Davidson Fleet & Leasing

THIS IS EXHIBIT "G" MENTIONED AND REFERRED TO IN THE AFFIDAVIT OF MARTHA BLUE SWORN BEFORE ME THIS 3RD DAY OF MARCH, 2016.



Notary Public





Why be anywhere when you can be everywhere.

Though autoTRADER.ca is the #1 destination for car buyers, we recognize that consumers are online on multiple platforms looking for cars. What if you could just enter one listing, push a button, and have it published to multiple online and offline media channels? Introducing, TRADER's Syndication solution. List with TRADER and get your listings pushed to Kijiji, Craigslist, all the major OEMs, you name it.



MAXIMUM EXPOSURE FOR ALL YOUR INVENTORY!

autoTRADER.ca

kijiji

carpages.ca

auto Expert.ca

carmigo.com

wheels.ca

cDemo

annonce.ca

AUTO GO.ca

AUTO.com

espaceauto.com

YOUR LISTINGS

MITSUBISHI MOTORS

Mercedes-Benz

HONDA

VW

NISSAN

GM

SUBARU

TOYOTA

INFINITI

ACURA

Ford

HYUNDAI

DEALER.COM

Find out how Syndicated Listings can exponentially increase your reach!

First Name *	Last Name *
Email Address *	Phone Number *
Dealership *	Province *

I consent to receive emails from TRADER: Yes No

Submit

JOIN OUR MAILING LIST!

Fill out and submit the form below to get hot off the press news, exclusive product offers, and more.

First Name
Last Name
Email Address
Dealership

I consent to receive emails from TRADER: Yes No

TRADER

<p>DEALER PRODUCTS</p> <ul style="list-style-type: none"> Marketplace Web Solutions Web Traffic Inventory Management <p>CONSUMER PRODUCTS</p> <ul style="list-style-type: none"> autoTRADER.ca Autos.ca 	<p>SERVICE & SUPPORT</p> <ul style="list-style-type: none"> Customer Service Product Support <p>RESOURCES</p> <ul style="list-style-type: none"> Dealer Education Videos Webinars Whitepapers 	<p>ABOUT</p> <ul style="list-style-type: none"> Company Management Team Partners Contact <p>NEWS & EVENTS</p> <ul style="list-style-type: none"> Newsroom Events Calendar
---	---	---

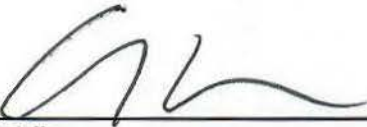
1 877 244 2300 | [Contact Us](#)

Copyright © TRADER Corporation. All Rights Reserved

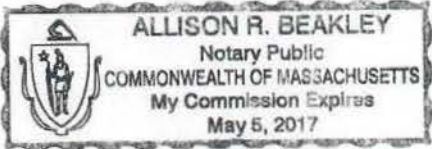
[Home](#)
[Privacy Policy](#)
[Terms of Use](#)
[Help](#)

Submit

THIS IS EXHIBIT "H" MENTIONED AND REFERRED TO IN THE AFFIDAVIT OF MARTHA BLUE SWORN BEFORE ME THIS 3RD DAY OF MARCH, 2016.



Notary Public



[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

From: Ed Woiteshek <ed@carproof.com>
Date: Tuesday, October 6, 2015 at 11:44 AM
To: Andrew Grochal <agrochal@cargurus.com>
Cc: Karim Hemani <Karim@carproof.com>
Subject: Re: Intro: Ed<>Andrew

Andrew:

I hope all is well. Have been on vaca so sorry for slow response.

Sounds like you've met up with Karim?

We should talk soon as one of our Canada marketplace partners is pushing us to agree not to integrate with cargurus in Canada.

Apparently you have the incumbents in Canada nervous.

Thanks, Ed

On Oct 1, 2015, at 7:46 AM, Andrew Grochal <agrochal@cargurus.com> wrote:

Thanks Shaw — I'll move you to bcc to spare your inbox.

Ed,

Very nice to meet you. Sounds like Shaw may have shared some of the context, but we're one of the larger auto listing sites in the US and launched in Canada earlier this year. We've partnered with AutoCheck in the US for vehicle history reports but I know they don't have a presence in Canada and they sent us your way, plus Canadian dealers keep mentioning CarProof to us. Would love to find time to set up a call with you or someone from your team to talk about ways to work together. Let me know what's best. Thanks,

Andrew

--

Andrew Grochal

Business Development Manager

2 Canal Park

Cambridge, MA 02141

P. 617.466.3662

www.cargurus.com

Find great deals from great local dealers

From: "Joseph, Shaw" <sjoseph@generalatlantic.com>

Date: Thursday, October 1, 2015 at 10:41 AM

To: "Ed Woiteshek (ed@carproof.com)" <ed@carproof.com>, Andrew Grochal <agrochal@cargurus.com>

Subject: Intro: Ed<>Andrew

Ed/ Andrew – you both have the context for the introduction (CarGurus working with

CarProof). I'll let you take it from here.

Hope you figure out a way to work together!

--Shaw

S. Shaw Joseph

General Atlantic

55 East 52nd St. | 32nd Floor

New York, NY 10055

T: 212.715.4084

M: 917.705.5044

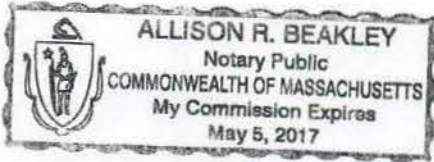
sjoseph@generalatlantic.com

This e-mail (including all attachments) is confidential and may be privileged. It is for the exclusive use of the addressee only. If you are not the addressee, you are hereby notified that any dissemination of this communication is strictly prohibited. If you have received this communication in error, please erase all copies of the message and its attachments and notify us immediately at help@generalatlantic.com. Thank You.

THIS IS EXHIBIT "I" MENTIONED AND REFERRED TO IN THE AFFIDAVIT OF MARTHA BLUE SWORN BEFORE ME THIS 3RD DAY OF MARCH, 2016.



Notary Public



[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

From: Greg Connor
Reply-To: "greg.connor@boostmotorgroup.com"
Date: Monday, February 1, 2016 at 11:55 PM
To: Marty
Subject: RE: Quick Question

Apologies for the delay – please see attached.
gc

Greg Connor
CEO, Boost Media Solutions
(416) 802 - 3647 (Cell)
(416) 487 - 7000 (W)

From: marty [<mailto:marty@cargurus.com>]
Sent: February 1, 2016 6:29 PM
To: greg.connor@boostmotorgroup.com
Subject: Re: Quick Question

Great. Thanks!

Are you planning to send over info for packages for photo taking?

Marty

Martha (Marty) Blue
SVP Business Development
CarGurus
2 Canal Park
Cambridge, MA 02141
P. 617.234.5519

www.cargurus.com

Find great deals from great local dealers

From: Greg Connor
Reply-To: "greg.connor@boostmotorgroup.com"
Date: Sunday, January 31, 2016 at 5:02 PM
To: Marty
Subject: RE: Quick Question

Yes, they do.
gc

Greg Connor
CEO, Boost Media Solutions
(416) 802 - 3647 (Cell)
(416) 487 - 7000 (W)

From: marty [<mailto:marty@cargurus.com>]
Sent: January 29, 2016 12:40 PM
To: Greg Connor <gconnor@boostmotorgroup.com>
Subject: Re: Quick Question

If they are only using Boost for Data Collection they have backend access?

Thanks,

Marty

Martha (Marty) Blue
SVP Business Development
CarGurus
2 Canal Park
Cambridge, MA 02141
P. 617.234.5519

www.cargurus.com

Find great deals from great local dealers

From: Greg Connor
Date: Thursday, January 28, 2016 at 11:45 PM
To: Marty
Subject: Re: Quick Question

Most of the time they enter it in our backend, but sometimes they will hand it to our collectors on paper and we enter it for them

gc

Greg Connor
(416) 802 - 3647

On Jan 28, 2016, at 2:04 PM, marty <marty@cargurus.com> wrote:

Hi Greg:

Many thanks for your time today. I look forward to getting the info we discussed.

Quick question. If a dealer is using Boost for Data collection only, how do they update pricing?

Thanks,

Marty

Martha (Marty) Blue
SVP Business Development

CarGurus
2 Canal Park
Cambridge, MA 02141
P. 617.234.5519

www.cargurus.com

Find great deals from great local dealers



This email has been checked for viruses by Avast antivirus software.

www.avast.com



This email has been checked for viruses by Avast antivirus software.

www.avast.com



boostmotorgroup.com

Boost Preliminary Thoughts for CarGurus



Feb 2, 2016

Greg Connor

AGENDA

1. Background
2. Syndication
3. Media Lists
4. Data Collection
5. Examples
6. Packages & Pricing
7. Next Steps

Background



boostmotorgroup.com

- Boost is a media services company with a unique combination of software, media and field services.
- Focus is on digital media solutions for automotive dealers, manufacturers and media partners
- Client base of 350+ Direct, and 2,000+ Accounts of Franchise & Independent Dealerships across Canada;
- Direct Sales to Dealers as well as branded and white-labeled solutions to Partners
- Partnered with Leading Industry players - Newspapers, Portals, Manufacturers, Wholesalers and Software Providers
- Proprietary software and services
- Seasoned Senior Management; total team of 35+ (10 PICs)

Syndication



boostmotorgroup.com

- Boost sends vehicle data to more destinations than any other provider in Canada, including media, websites, DMS, wholesale, D2D, Social and other destinations.
- Boost will create a custom feed to import or export vehicle data as well – typically for free
- Boost's primary syndication package is \$100/mth and vehicles are sent to an unlimited number of Paid-media sites (i.e. the dealer pays the media provider directly where media charges are incurred)
- Boost also offers an SEO package for \$50/mth where data is sent to all free-media destinations.
- A list of the most common destinations is on the following slide (does not include custom feeds, DMS and websites)

Media & Wholesale Lists



boostmotorgroup.com

Free

AOL - Autoblog
AutoandTruck.ca
BrowseCars
buyselltrade.ca
Canada Car Buyer
Canadian Black Book
carGurus.com
carsandtrucksondemand.com
carandtruck.ca
Carcompete
Carmigo
Carsgone.com
Clickable Cars
DealerRater
Demanzo
Directory4Cars
FreeAutoAds.ca
Gary Stock Co
Gubagoo
Lemon Free
Mitula.ca
MonsterAuto
MyToba
ninono.ca
QuebecAutoSource.com
Shop Auto
Smart Shopper
Trovit Export
Used Car Canada
Used Cars Ontario
Vast
Winnipeg Free Press
Wheelslot
xmarket.com
youtube.com

Paid

Adesa Export
allcollectorcars.com
Autabuy
Auto123
AutoCatch
AutoGo (TC Media)
AutoV2 (now DealerCity)
Autonet
Autotrader.ca
Autotrader.com Classics
CarPages
Castanet
Classiccars.com
Craigslist
D2C Media
Driving.ca - powered by Kijiji
DupontRegistry
eBlock
Hemmings
Kijiji
MotorWorld Export
NewCarSelloff/AIM
Openlane
OVE.com/Manheim
Rides.ca
TradeRev
UsedEverywhere
Wheels.ca
Xlane

Data Collection

- Dealers increasingly looking for Collection alternatives:
 - In-house
 - Enhancement
 - “Non-retail” – Trade-ins, Wholesale, D2D, OEM programs
- Boost’s history is in collection and logistics expert at dealerships
- National Footprint, both retail and full data inspection
- Currently doing National programs with Kia and Jag/Land Rover
- Boost Proposes
 - White Labelled Inspection/Data Collection Packages:
 - Retail Package
 - Full Inspection – Urban & Rural
 - Retail Upgrades

Retail Examples

BOOST 3.0

boostmotorgroup.com



INTERIOR	INTERIOR	MECHANICAL
Air Conditioning	Memory Seat(s)	Automatic Transmission
AM/FM Stereo	Passenger Climate Control	Rear Wheel Drive
Auto-Dimming Rear-View Mirror	Power Door Locks	Steptronic - Manual Shift Mode
CD Player	Power Drivers Seat	EXTERIOR
Center Arm Rest	Power Mirrors	Alloy Wheels
Center Console	Power Passenger Seat	Chrome Tip Exhaust
Climate Control	Power Steering	Fog Lamps
Cruise Control	Power Windows	Power Sunroof
Cup Holders	Rear Defroster	SAFETY
Cup Holders - Rear	Rear Vents	3 Point Rear Seat Belts
Digital Clock	Remote Trunk Lid	4 Wheel Disc Brakes
Exterior Temp Gauge	Security System - Manufacturers	Anti-Lock Brakes
Floor Mats	Steering Wheel Audio Controls	Child Proof Door Locks
Front Bucket Seats	Steering Wheel Controls	Child Seat Anchors
Fuel Data Centre	Tachometer	Drivers Side Airbag
Heated Seats	Telescoping Steering	Front Curtain Airbags
Interval Wipers	Tilt Steering Column	Passenger Side Airbags
Keyless Entry	Vanity Mirror(s)	Rear Curtain Airbags
Map Light		Side Airbags
		Third Brake Light
		Traction Control

Full Inspection Includes:



boostmotorgroup.com

Exterior Damages		Interior Damages		Mechanical Damages	
Area	Type	Area	Type	Area	Type
Front Bumper	Scratch Through Pain	Left Front Seat	Stained	SELECT	
Length (inches)		Comments		Comments	
<input type="text"/>		<input type="text"/>		<input type="text"/>	
<input type="button" value="Add"/>		<input type="button" value="Add"/>		<input type="button" value="Add"/>	

Damage Photo & Description

Disclosure Form Available

Tire Tread			Paint Depth	
	*Tread	*Size	Left	Right
Left Front	<input type="text"/>	/32	<input type="text"/>	<input type="text"/>
Left Rear	<input type="text"/>	/32	<input type="text"/>	<input type="text"/>
Right Front	<input type="text"/>	/32	<input type="text"/>	<input type="text"/>
Right Rear	<input type="text"/>	/32	<input type="text"/>	<input type="text"/>
Spare	<input type="text"/>	/32	<input type="text"/>	<input type="text"/>
<input type="button" value="Save"/>				

* Required fields.

Tread and Paint Depth Measurements

No disclosures for this vehicle

If there are disclosures fill out the form below and click on Save.

Are there any badge changes or indication that relate to a different model? Yes

Is the odometer broken, replaced, rolled back or in miles on the vehicle? Yes
If yes, which?

In Miles Yes

Replaced Yes

Broken Yes

Rolled Back Yes

Unreadable Yes

Total Kilometers Unknown (TKU) - Last Known Mileage

Was this vehicle ever used as a daily rental, police cruiser, emergency services vehicle, taxi or limousine? Yes
If yes, which?

Taxi or Limo Yes

Daily Rental Yes

Police cruiser Yes

Emergency services Yes

Driving School Yes

Has this vehicle suffered any fire damage? Yes

Has this vehicle suffered any flood damage? Yes

Is this an Alternate Fuel Vehicle; Type: Propane, Diesel, Other Yes

Was manufacturer's warranty cancelled on the vehicle? Yes

Has this vehicle ever been declared by insurer as total loss? Yes

Has this vehicle ever been classified under Highway Traffic Act as irreparable, salvage or rebuilt? Yes

Kia Examples



boostmotorgroup.com

https://agx-kia.ca/inspection/KNADE223096468114

AGX KIA Home | CPO Inventory | Used Inventory | FMC Stock | Daily Rentals
 KCI Demos | Auction Inventory | KCI Lease Returns Mobile Help Log In
 Complete Inventory -

Inspection Report for KNADE223096468114

Images



Details

Make	Kia	Model	Rio	Year	2009
Colour	Orange.....Lv	Number of Doors	0	Engine Size	1.6L
Mileage	98449	Engine Type		Series	EX CONVENIENCE
Cylinders	0	Interior Colour		Material	
Seating Capacity	5	Seating (Front)		Seating (Middle)	
Seating (Rear)		Transmission	Manual	Number of Keys	
Manual Present		Smokers		Drive Train	FWD
Frame Damage		Engine Noise		Transmission Fluid	
Transmission Functional		Brakes OK		Exhaust OK	
Air Conditioning OK		Heater OK		Fluid Levels	
Suspension OK		Alignment OK		Belts OK	
Hoses OK		Engine Oil		Hood (mm)	
Left Fender (mm)		Left Door (mm)		Left Rear Door (mm)	
Left Quarter Panel (mm)		Left Deck Lid (mm)		Front Bumper Cover (mm)	
Right Quarter Panel (mm)		Right Rear Door (mm)		Roof Panel (mm)	
Right Front Door (mm)		Right Fender (mm)		Rear Bumper	
Second Set of Tires		Winter Tires		Bo	
Fuel Type		Speeds		Pain	
General Rating		Metal Rating		Airb	
Was Test Driven		Odometer Condition		Rc	
Check Engine Light		Interior Type			

Tires					
Location	Manufacturer	Size	Tread Depth	Speed	Wheel
Left Front	Westlake SP06	175/70R14	8		
Left Rear	Goodyear Integrity	175/70R14	7		
Right Front	Westlake SP06	175/70R14	8		
Right Rear	Goodyear Integrity	175/70R14	8		

Exterior Damage						
Photo	Panel	Part	Damage	Occurrences	Size	Comments
	Passenger side Rocker Panels	Passenger side Rocker Panels	Scratch Through Paint	2		
	Front Bumper	Front Bumper	Cracked	1		
	Front Bumper	Front Bumper	Scratch Through Paint	12		
	Rear Bumper	Rear Bumper	Scratch Through Paint	12		

Data Collection – Package Details



“Retail” - 28+ Pics Pack – This is the standard Boost customer package, that typically includes 28 pictures, and often more depending on trim levels and after-market features. Comprehensive features are collected by physical inspection. Each car is moved to a “glamour shot” location as desired by the dealership for the photos. Visits to the dealer would be weekly, or bi-weekly depending on location. Visits subject to a minimum 4 per visit.

Cost: \$20/vehicle

Retail Light – 15+ Pics Pack– Similar to above, only fewer pictures. No moving of the car to Glamour location; cars to be moved by dealership if required and open for data collectors to shoot inside the vehicle. Visits to the dealer would be weekly, or bi-weekly depending on location. Visits subject to a minimum 4 per visit.

Cost: \$14/vehicle

Data Collection – Package Details (Cont.)



Wholesale/Full Inspection – All retail pics of 28+ package, plus damage photos where applicable; collection data also to include paint depth around vehicle, tread depth and non-mechanical damage information. Disclosure form made available to dealer but not completed by Boost

Cost: “Urban” \$30/vehicle

“Rural” \$30/vehicle at 4 car minimum – see Rate Card

“Upgrade to Retail” - \$10-15/vehicle – see Rate Card

Data Collection – Rate Card



Wholesale Rate Card and Services

	<u>List Price</u>	<u>Check Service Required</u>
Collection		
Not Required		<input type="checkbox"/>
Per Car Retail Upgrade	\$10	<input type="checkbox"/>
Per Car Retail Upgrade - Third Party Feed	\$15	<input type="checkbox"/>
Urban/Weekly Visit - Per Car Full Inspection	\$30	<input type="checkbox"/>
Rural/On Demand - Per Car Full Inspection		<input type="checkbox"/>
1 Vehicle	\$90	
2 Vehicle	\$70	
3 Vehicle	\$50	
4+ Vehicle	\$30	
	<input type="text"/>	

Next Steps & Thank You



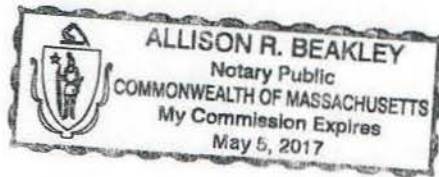
- Boost is very interested in coming to terms on packages and pricing to launch this with CarGurus
- We would be delighted to provide any further information at your request.

Greg Connor
Boost Motor Group Inc.
(416) 487 - 7000
3080 Yonge Street, Suite 5032
Toronto ON M4N 3A5
greg.connor@boostmotorgroup.com

THIS IS EXHIBIT "J" MENTIONED AND REFERRED TO IN THE AFFIDAVIT OF MARTHA BLUE SWORN BEFORE ME THIS 3RD DAY OF MARCH, 2016.



Notary Public



[REDACTED]

Spoke with CarPages.ca today. Attached is info on their Data Capture Service. Cost is \$200 per month for 50 cars (cost would be \$400 for 100 cars etc.). They have an employee who takes the photos. Dealer has full ownership. Let me know if you have any other questions.

Thanks!

Martha (Marty) Blue
SVP Business Development
CarGurus
2 Canal Park
Cambridge, MA 02141
P. 617.234.5519

www.cargurus.com <<http://www.cargurus.com/>>
Find great deals from great local dealers

On 2/17/16, 2:37 PM, "Ben Mirecki" <ben@carpages.ca> wrote:

>Hi Diego and Marty,

>

>Just to follow up from our call, please find attached a brochure on our data capture service and below is a link to one of the dealer's that we're doing photo capture for (we also built their website).

>

>Example of our photo/data capture service: <https://canadacarskw.com/inventory/2012-ford-focus/2052988/>

>

>Thanks again for the call.

>

>Ben

>

>-----Original Message-----

>From: Ben Mirecki

>Sent: Wednesday, February 17, 2016 12:29 PM

>To: Diego Sanson

>Cc: marty

>Subject: Re: CarGurus/Carpages Call



dealersite+
by CARPAGES.CA

NEW! Data Capture Service

- 1. Flat-fee data capture service**
2. Weekly visit to capture pre-owned vehicle inventory
3. Professionally trained data capture staff
4. Up to 18 consistent angle and high quality photos (we will ensure that additional features like navigation, Sunroof/Moonroof, Back-up camera, Special Edition Vehicle emblem, etc. will be captured at no additional cost)
5. Proper image sizes and orientation
6. Carefully crafted vehicle title
7. Extensive feature list based on VIN and vehicle inspection
8. No-cost syndication to Carpages.ca, Auto Trader, Kijiji or Canadian Black Book as required
9. Vehicles captured are instantly published to Carpages.ca and your DealerSite+ website



What's the advantage of Data Capture Service?

It's really quite simple - good photographs and accurate data are what buyers are looking for, and capturing this information professionally presents the best chance to generate leads. Until now, it has been difficult and time-consuming to obtain consistently high quality photographs and data. Staff time is a valuable resource, and hiring a professional photographer is expensive. **Data Capture Service** is an affordable and easy way to get the high-level photographs your customers are looking for, and it works seamlessly to compliment the modern professional look of your DealerSite+ website. There is also an option to syndicate images and data to Carpages.ca, Auto Trader, Kijiji or Canadian Black Book as required.



At Carpages.ca, we work hard to deliver personal service that exceeds your expectations. We have been listening to and working with new and used car dealers for over a decade, and want to earn your business. Visit us at www.carpages.ca or give one of our friendly staff a call at 1-866-56-PAGES

TRADER CORPORATION

- and -

CARGURUS, INC.

Applicant

Respondent

Court File No. CV-15-11232-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding Commenced at Toronto

**AFFIDAVIT OF MARTHA BLUE
(Sworn March 3, 2016)**

BERESKIN & PARR LLP/S.E.N.C.R.L., s.r.l.
Barristers & Solicitors
Scotia Plaza, 40th Floor
40 King St. West
Toronto, ON M5H 3Y2

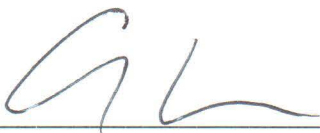
Jonathan G. Colombo
(LSUC # 32188W)
Amrita V. Singh
(LSUC # 64232R)

Tel: (416) 364-7311
Fax: (416) 361-1398

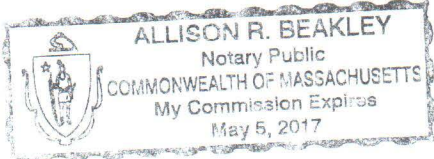
Lawyers for CarGurus, Inc.

3

This is Exhibit "3" referred to in the Affidavit of Martha Blue sworn before me this 14th day of April, 2016.



Notary Public



Court File No. CV-15-11232-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

BETWEEN:

TRADER CORPORATION

Applicant

- and -

CARGURUS, INC.

Respondent

APPLICATION UNDER SECTION 34(4) OF THE
COPYRIGHT ACT, R.S.C. 1985, c. C-42 AS AMENDED

AFFIDAVIT OF ROGER DUNBAR

I, Roger Dunbar, of the City of Toronto, in the Province of Ontario, MAKE OATH AND SAY:

1. I am the Vice President of Marketing for the Applicant, Trader Corporation (“Trader”), and have personal knowledge of the matters contained in this affidavit, except where I have indicated that my knowledge is based on information from others, in which case I believe that information to be true. In preparing this affidavit, I have reviewed the affidavits of Allen Wales and Lucian Neacsu.

My Background

2. I began working for Trader in April 2012 as Vice President of Marketing. I manage consumer and dealer marketing efforts. I also oversee the marketing intelligence group

and manage product pricing, and am also responsible for the consumer experience of autotrader.ca.

Trader Corporation

3. Trader is a corporation incorporated pursuant to the laws of the Province of New Brunswick. Its principal executive offices are located in Toronto, Ontario. Trader and its predecessor corporations entered into business less than 50 years ago.
4. Trader operates what are referred to as “digital marketplaces” for vehicles in Canada. Via autotrader.ca and autohebdo.net and related mobile applications, Trader advertises a large inventory of new and used vehicles for sale in Canada. Through these digital marketplaces, purchasers can search for vehicles by model, make, colour and year, among other criteria, and can contact vehicle sellers via email forms and phone numbers provided on the sites. Trader sources its inventory from private sellers and vehicle dealers. Trader also provides a comprehensive set of marketing software solutions to Canadian vehicle dealers.

CarGurus

5. The Respondent, CarGurus, Inc. (“CarGurus”), is a corporation incorporated pursuant to the laws of Delaware in the United States of America. It appears to me from the CarGurus website, cargurus.com, that CarGurus is headquartered in Cambridge, Massachusetts.
6. CarGurus has registered the trade-mark “CARGURUS” in Canada. Attached as **Exhibit “A”** is a printout from the Canadian Intellectual Property Office’s website showing the history of the registration of this trade-mark, which I printed on December 18, 2015.

-3-

7. CarGurus operates a website, cargurus.com, that is a digital marketplace for the purchase and sale of new and used vehicles. In Canada, CarGurus lists dealer vehicles for sale and buyers can search for such vehicles. Attached as **Exhibits “B”** and **“C”**, respectively, are the About Us and Terms of Use webpages from the cargurus.com website, which I printed on December 18, 2015.
8. On the top right corner of every webpage on cargurus.com is a geographic flag that allows a user to choose among American, Canadian and British versions of the website. When the Canadian geographic flag is set, the vehicles displayed to users are located in Canada.
9. On a date unknown to me, but before June 2015, cargurus.com's Canadian geographic flag was added to the website and the website also started to include vehicles located in Canada.
10. Attached as **Exhibit “D”** is an example of a vehicle sales page for Canada, which I printed from cargurus.com on December 18, 2015.

Trader's Business

11. Trader is at the center of the car buying process in Canada, connecting consumers, dealers and original equipment manufacturers (also known as “OEMs” or car manufacturers). Trader's digital marketplaces, autotrader.ca and its French language equivalent, autohebdo.net, and their related mobile applications, bring together a large Canadian audience of car shoppers and a comprehensive and detailed inventory of new and used vehicles. However, to be clear, Trader does not buy or sell vehicles – it helps put interested buyers and sellers together so they can consider, and sometimes enter into, transactions directly with each other.

-4-

12. Trader provides tools that potential Canadian car buyers can use at home, at work, and increasingly at the dealer's lot, to choose their car and dealer from Trader's vast inventory. Trader's digital marketplaces allow car buyers to search listings by the features that matter most to them: vehicle year, make, model, mileage, price, colour, and geographic location, among other categories. Buyers can then focus their search by clicking through to the Vehicle Detail Page ("VDP") for a specific car, which provides information including vehicle features, mileage and fuel economy, as well as photographs. Buyers can also conduct additional research through Trader's marketplaces by accessing car and dealer reviews and car history reports. Once a buyer selects a vehicle, the VDP provides them with all the necessary information to contact the advertising dealer and, ultimately, make a purchase.
13. Trader's digital marketplaces are a very popular destination for car buyers in Canada. According to data obtained from ComScore, the leading internet analytics company in Canada, Trader's digital marketplaces received, on average, approximately 9.6 million visits per month during the twelve months ended October 31, 2015. According to Google Analytics, in November 2015, Trader's digital marketplaces received over 10.6 million visits from over 5.1 million unique visitors.
14. These visitors can access a large inventory of vehicles for sale. Over the last 12 months, Trader's marketplaces contained, on average by week, approximately 456,000 vehicle listings and, as of November 30, 2015, approximately 5,300 commercial sellers of vehicles.

-5-

15. The size of Trader's visitor base draws more dealers (and their vehicle inventories) to Trader's marketplaces, whose listings in turn draw more consumers. Trader's marketplaces thereby benefit from powerful network effects.
16. Trader also acts as an advisor to Canada's automotive dealers throughout their marketing process. Trader's relationships with its dealer customers have been forged over many years and strengthened by helping its dealer customers transition from traditional, paper based marketing, to digital marketing. Trader has invested heavily in sales and marketing. Trader spent over \$37 million in 2014 in respect of sales and marketing and over \$35.7 million for the first 11 months of 2015.
17. As part of the services that Trader provides, Trader offers a comprehensive set of software solutions to dealers, most of whom lack the scale, infrastructure or expertise to develop such tools on their own. Trader's software solutions include website creation, management and maintenance, inventory management, assistance with visibility in search engines (such as Google) and marketing performance analytics. These products are designed to integrate with Trader's marketplaces to help dealers more effectively target vehicle shoppers, manage their businesses and brands and ultimately increase profitability. Trader's dealer customers pay recurring subscription fees to access Trader's marketplaces and to use its marketing software solutions.
18. In other words, many dealers not only supply vehicle listings (which include photographs – including photographs taken by Trader personnel) to Trader for its digital marketplaces, but also have Trader administer and manage the dealers' own websites, including vehicle listings (which are also displayed on Trader's digital marketplaces). This has the

beneficial effect for Trader of making it a key participant in the online marketing of vehicles by integrating Trader into these dealers' businesses.

Financial Information

19. Over the past four years, Trader's revenues have been growing:
- (a) for the year ended December 31, 2012, Trader generated revenue of \$153.7 million;
 - (b) for the year ended December 31, 2013, Trader generated revenue of \$161.2 million;
 - (c) for the year ended December 31, 2014, Trader generated revenue of \$178.6 million;
 - (d) for the nine months ended September 2015, Trader generated revenue of \$145.9 million.
20. Approximately two thirds of Trader's revenues are generated directly from its digital marketplaces (the balance comes from website advertising and other services). The different aspects of Trader's business work together and reinforce one another, so it is difficult to isolate the revenues generated from only one aspect of the business. For example, if there are more vehicles posted for sale in Trader's marketplaces and as a result more customers visit Trader's marketplaces, then Trader is able to make more from display (brand) advertising on those marketplaces.

Trader Operates in a Competitive Environment

21. The market for Canadian vehicle digital marketplaces and providers of marketing software solutions is competitive. Vehicles are not typically marketed exclusively through any

-7-

single channel, and dealers can list their inventories through more than one source. Many of Trader's dealer customers also list their vehicle inventory on Trader's competitors' websites.

22. Trader faces competition from numerous websites (such as carpages.ca, auto123.com, autocatch.com and wheels.ca) that offer vehicle listings, information and other content directly to consumers, including dealers' and OEMs' own websites, internet search engines such as Google and Bing, social media networks such as Facebook and other websites featuring electronic classified advertising, such as kijiji.ca and craigslist.ca. Trader also faces competition from traditional media companies such as newspapers, niche classified publishers and television and radio companies, many of which currently publish automobile advertisements. In addition to direct competitors, Trader also competes indirectly with vehicle brokerage firms. There are also several websites that provide automotive auction services, such as eBay.

Licensing Agreements

23. The relationships among dealers, private sellers and website providers, including Trader, are typically the subject of licensing agreements. In order for Trader to use content owned by others, such as photographs and descriptions of vehicles, in its digital marketplaces, it licences that content on agreed terms. Similarly, in almost every instance of which I am aware where another organization has used content for which the rights are held by Trader, such organization has licensed the content on terms agreed to by Trader. CarGurus is an exception to this general rule, as discussed below.

The Capture Service and the Trader Photos

24. In order to compete with other providers, including free marketplace services such as Craigslist, Trader aims to provide premium services to dealers. Trader's goal in this regard is to make dealing with Trader better and more worthwhile for dealers than simply listing vehicles on free marketplace websites or relying on search websites such as Bing and Google. One such service offered by Trader is its Capture service. Simply put, the Capture service involves Trader's employees and contractors taking photographs of clients' vehicles ("Trader Photos") to be posted on Trader's and the dealers' websites. The Capture service is more fully described in the affidavit of Lucian Neacsu.

Photographs are Central to Trader's business

25. Photographs of vehicles are at the centre of, and are integral to, Trader's business and the marketplace that it has created. Photographs are a key feature for how vehicle sellers present and market their vehicles on-line, and that is why Trader offers services such as Capture.
26. On September 30, 2015, Trader's Director of Consumer Marketing and Experience presented a webinar to Trader customers titled "*Modern Consumer Purchasing Behaviour: 3 Tips to Influencing the Consumer Journey!*". This webinar discussed the elements of a great vehicle listing and noted that buyer interest in a vehicle listing is much higher if even a single photo is included. The webinar also discussed what makes a great photo and provided examples. Attached as **Exhibit "E"** is the PowerPoint presentation that accompanied the webinar.

Trader Licenses Content to Competitors

27. Sometimes dealers want to license their vehicle listings to competitors of Trader. Each dealer or dealer group makes an individual marketing contract with that competitor. In order to facilitate the actual provision of the vehicle listing data between competitors, a practice has developed whereby a dealer may request that as an administrative convenience Trader provide that data. This process is called “syndication.” To be clear, even when Trader syndicates such content, it provides that content only with respect to individual dealers that make a contract with the competitor and request that Trader implement the syndication arrangement regarding that dealer’s vehicles.
28. Trader has not assigned its copyright interests in the Trader Photos to any person, nor has it licensed or permitted its licensees to sub-licence, the Trader Photos to CarGurus.

CarGurus’ Entry into the Canadian Market

29. According to a press release issued by CarGurus, a copy of which is attached as **Exhibit “F”**, CarGurus entered the Canadian market in May 2015. As discussed further below, Trader received complaints from dealers that their vehicles were appearing for sale on CarGurus’ website without their permission. Following these reports, Trader employees reviewed the CarGurus’ website and found many instances of Trader Photos being displayed at cargurus.com. This led to the investigation and subsequent communications with CarGurus described in the affidavit of Allen Wales.

The Impact of CarGurus' Conduct on Trader

30. According to comScore, an internet analytics company, in October 2015, 78% of visitors to cargurus.com also visit autotrader.ca. Year-over-year, cargurus.com's user views originating from Canada have increased by 119% and visits have increased by 172%. By comparison, autotrader.ca's user views have increased by 21% and visits have increased by 5%.
31. As noted above, Trader has received complaints from dealer customers about their vehicles being displayed on CarGurus' website without their authorization. For example, I was informed by Jeff Woolcock, Trader's Vice President of Sales, that on August 31, 2015, the Vice President of Sales for the Performance Auto Group, Dimitri Dariviris, contacted Mr. Woolcock to understand how Performance Auto Group's inventory had been placed on CarGurus' website without their permission. Mr. Woolcock referred Mr. Dariviris to me. The Performance Auto Group, based in Toronto, Ontario, maintains a significant inventory of vehicles and is a very important customer for Trader. As of December 15, 2015, it represented 24 dealerships with an inventory of 2,229 vehicles. Mr. Dariviris' objection was typical of many of the largest dealer groups, in that he told me that he did not want to have a digital marketplace posting his vehicles without his permission.
32. Other dealers, both large and small, have also contacted Trader about their vehicle listings appearing on CarGurus' website, as they were often under the mistaken impression that Trader had syndicated this content to CarGurus. I have been asked by Trader sales representatives to respond to several dealers' complaints, and have also been made aware of other dealer complaints that I have not dealt with directly. The nature of the complaints

-11-

generally centres on the lack of permission given to CarGurus to post dealers' inventory to cargurus.com and dealers' objections to some of the summary information provided to potential buyers by CarGurus. I have been told by these dealers that they do not want their inventory (including, naturally, the associated photographs) posted without their permission, and that they do not want their vehicles being posted on CarGurus' website, in particular. Some of these dealers that I have spoken to directly and indirectly (via providing the Trader sales representative with a response to pass onto the dealer) include:

- Group Duval (Boucherville) (includes Duval Mazda, Duval Mercedes, Duval Toyota and Duval Volkswagen) in October 2015 (contact person – Yan Savaria)
- Peterborough Volkswagen on October 30, 2015 (contact person – Shannon Cavanaugh)
- OBK Automobiles (Laval) in November 2015 (contact person – Elyssa)
- Gateway Toyota (Edmonton) in November 2015 (contact person – Stuart Blundell)
- Nisku Ford (Nisku, Alberta) in November 2015 (contact person – John Demeres)
- Brentridge Ford (Wetaskiwin, Alberta) in November 2015 (contact person – Rich Leslie)
- Pioneer Chrysler (Wetaskiwin, Alberta) November, 2015 (contact person – Wayne Shaw)
- West Coast Toyota (Pitt Meadows, British Columbia) in November 2015 (contact person – Randy Saunders)
- Dilawri Group on November 24, 2015 (contact person – David Boots)
- Saab of Kitchener-Waterloo on November 25, 2015 (contact person – Jeff Schluetter)
- AutoFlash (St. Huber) on November 27, 2015 (contact person – Adam Schrufer)
- Barnes Wheaton GM (Surrey, British Columbia) on November 28 (contact person – Kevin Chow)

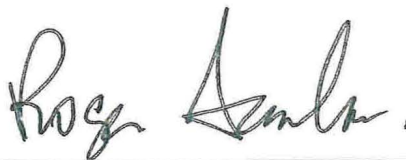
- Team Systems (Calgary) on December 7, 2015 (contact person – Larry Millar) (a copy of the email received by Trader from Mr. Millar is attached as **Exhibit “G”**)
- Forbes Motors on December 8, 2015 (contact person – Russ Forbes)
- Brown Bros Group (Brown Bros Ford, Granville Toyota) on December 9, 2015 (contact person – Rob Jurisic)
- Daleo Motor Sales on December 11, 2015 (contact person – Felice Passariello)

33. The mere fact that dealers are complaining to Trader about CarGurus’ conduct is bad for Trader’s business, although the impact of that harm is not yet observable.

SWORN before me at the City of Toronto,
in the Province of Ontario on the 22nd day of
December, 2015



A Commissioner for taking affidavits
Name: Hannah Arthurs



Roger Dunbar

This is Exhibit "E" referred to in the Affidavit of Roger Dunbar sworn December 22, 2015



Commissioner for Taking Affidavits (or as may be)

TRADER™

GO FWD

Modern Consumer Purchasing Behaviour: 3 Tips to Influencing the Consumer Journey!

Webinar Presented by: Ian MacDonald
Director, Consumer Marketing and Experience, autoTRADER.ca

Dial-In: +1 (647) 497-9369

Access Code: 387-646-243

There are **2** ways to listen to this webinar



Using your
computer speakers
(preferred)



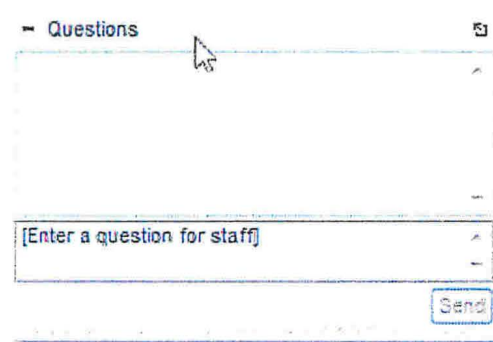
Dialing into the
toll free number

Dial-In: +1 (647) 497-9369 (optional)
Access Code: 387-646-243

Questions

If you have any questions during the webinar, you can enter your questions into the Questions pane for our panelists to answer.

- 1 Type your question into the Questions pane
- 2 Click Send.



Your Presenter



Ian MacDonald
Director, Consumer
Marketing and Experience

autoTRADER.ca

Our Topics

1

How Consumers are Shopping Online Today

2

Importance of Online Channels

3

3 Tips to Influencing the Consumer Journey

How Consumers are Shopping Online Today

TRADER[™]
GO FWD

The process gets shorter
every year!

22 days

Total days
anticipated

16 days

Total days in
reality

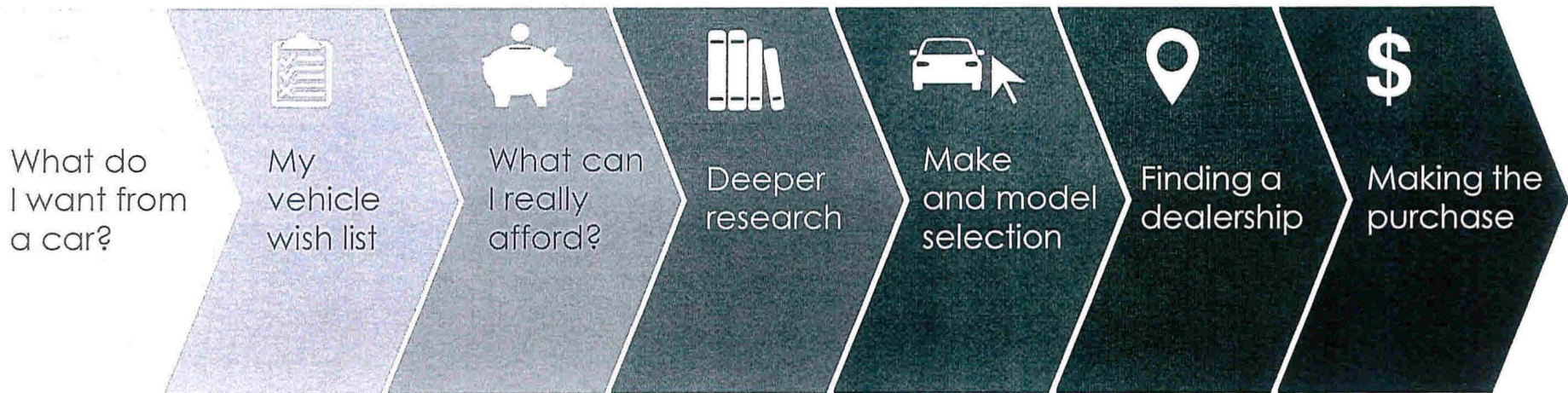
2.5 days

Dealer interaction
phase

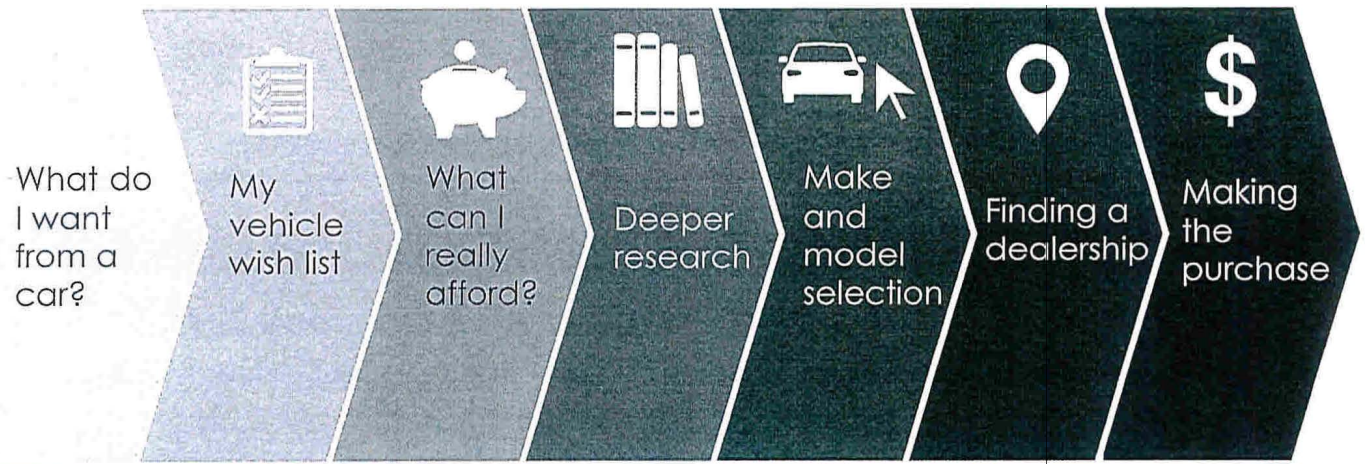
1.1 dealers

Mean # dealers
visited

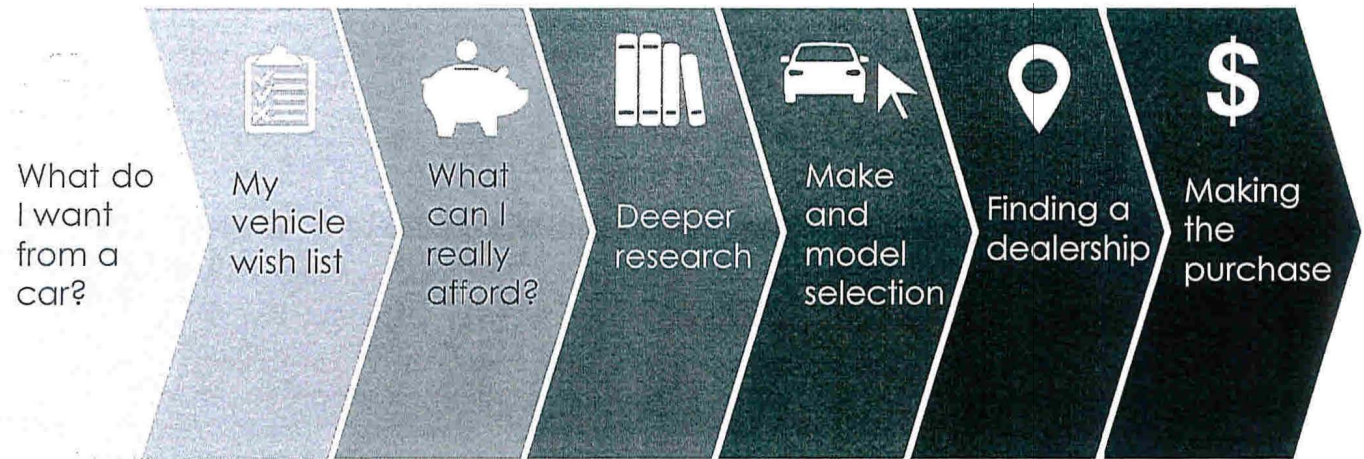
The Journey Hasn't Changed... The Method Has



So what online sources are most used at each step?



Dealer websites							
Marketplaces							
Online expert review sites							
Manufacturer's website							
Online owner reviews							
Blogs/Internet forums							
Social media							
Other							



Dealer websites	40	44	32	41	43	50	34
Marketplaces	35	45	39	38	37	45	43
Online expert review sites	45	42	20	56	47	19	18
Manufacturer's website	43	37	20	44	36	24	15
Online owner reviews	42	35	19	49	38	22	17
Blogs/Internet forums	23	19	15	25	18	17	13
Social media	12	10	12	14	12	12	16
Other	7	9	33	6	9	11	17

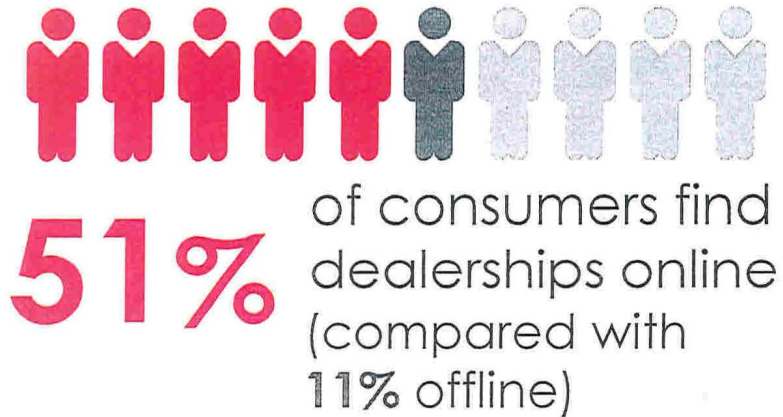
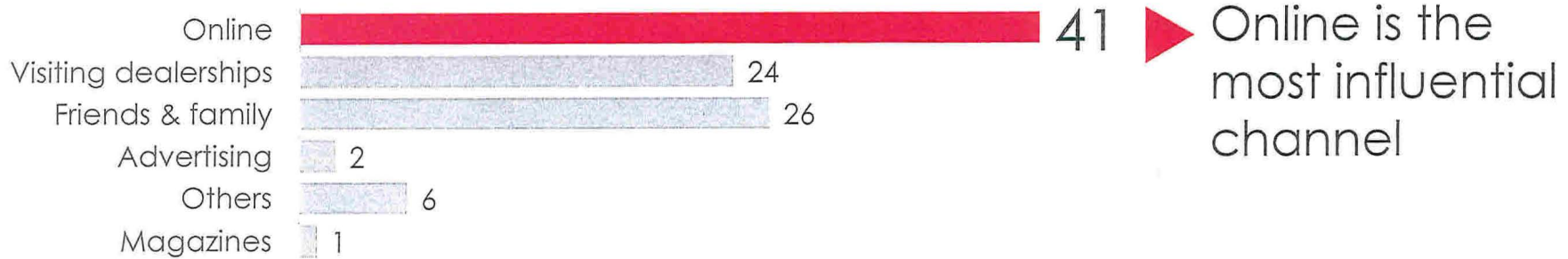
Dealer Websites,
Marketplaces and
Review Sites dominate
most phases of the car
buying journey

Importance of Online Channels

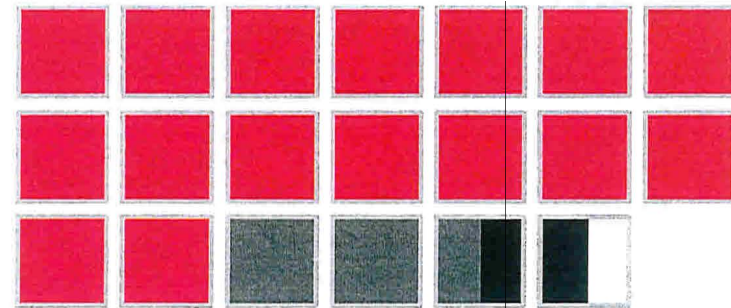


TRADER[™]
GO FWD

By the Numbers



The path to purchase is mostly online:

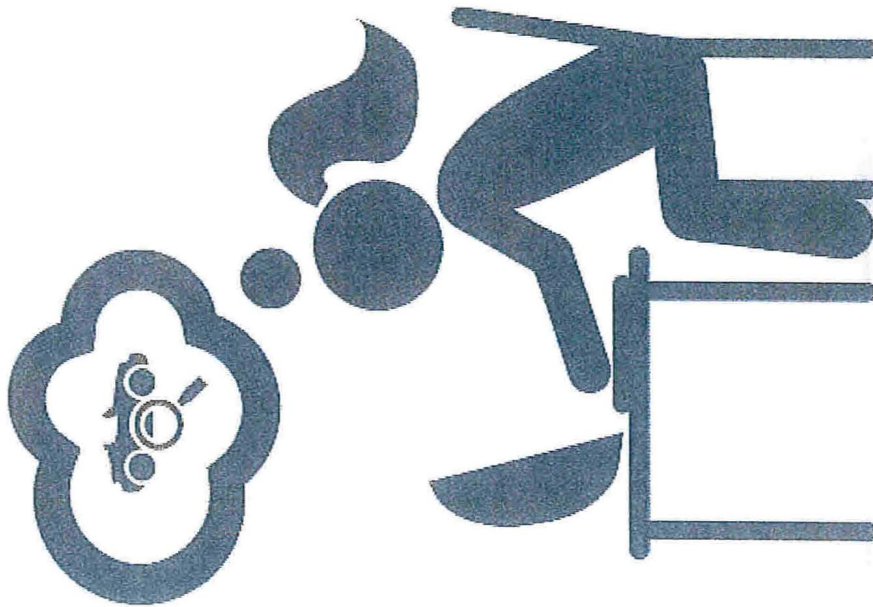


PATH TO PURCHASE (16 days)
DEALER INTERACTION (2.5 days)
DEALERS VISITED (1.1 days)

About **one quarter of consumers** are using and interacting with mobile apps dedicated to automobiles.



TRADER
GO FWD



80%

of car shoppers
consult an online
marketplace for
their next vehicle

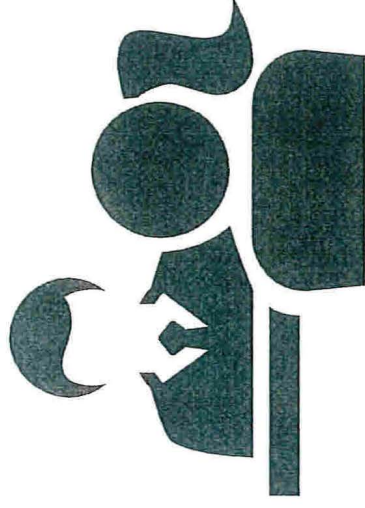
TRADER[™]

GO FWD

3 Tips to Influence the Consumer Journey:

- 1. Visuals**
- 2. Copy**
- 3. Pricing**











What is your goal?



Turn online visits

Dealership visits

Anatomy of a Great Listing

-  Price
-  Video
-  The Virtual Walk-Around
-  Contact Information
-  Tell the Car's Story
-  Include Specials
-  Map and Directions
-  Special Offers
-  Contact Form
-  Why Buy From Us

Effective merchandising is key!

Poor
Merchandising

2014 Dodge Journey *7 PASSENGER***SXT***3.6L ...**

7 PASSENGERSXT***3.6L PENTASTAR V6***6 SPD AUTO TRANS***AIR COND***POWER WINDOWS***POWER LO...

Free CarProof

39,428 km
≤ 1 day ago

ABC MOTORS

Within 3 km

Contact Seller

Good
Merchandising

2014 Dodge Journey LIMITED |7 PASSENGER|SUN...

Test drive this 2014 Dodge Journey! Stylish and sophisticated, this SUV grips the pavement with...

\$25,777
30,743 km
> 2 weeks ago

Free CarProof

MUCKLER MOTORS

Within 19 km

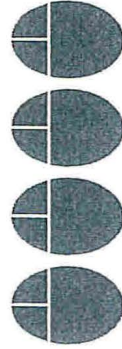
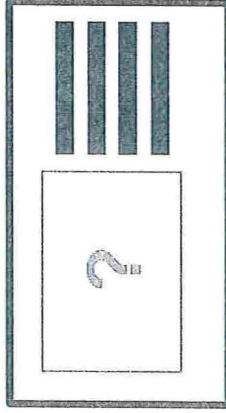
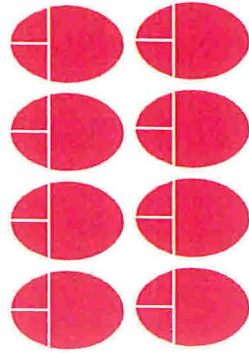
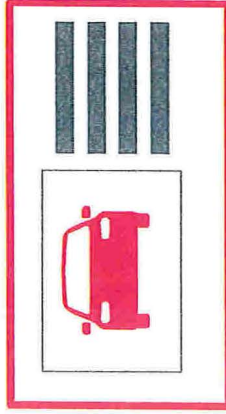
Contact Seller

View 10 similar vehicles from this dealer

Tip 1: Photos Are Paramount

Click through rates are

100% - 120%



higher with a **single photo** included within a listing.

What makes a great photo?

TYPICAL PHOTO



WELL FRAMED PHOTO



GREAT PHOTO



Typical Photo



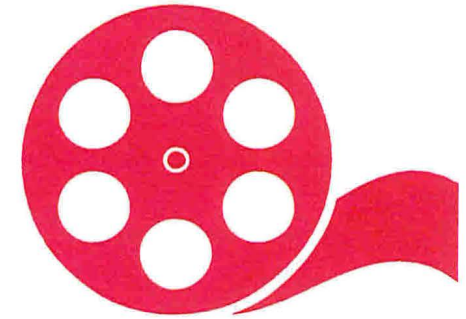
Great Photo



TIPS:

- Use a great camera
- Take a course, or
- Hire a pro
- Have a checklist

Videos are the virtual test drive



Show the actual vehicle



Do a 360 walkaround



Keep it brief – under <2min



Have a compelling host – someone passionate about the vehicle



Plug the dealership – show what it looks like, and how to get there

Video is now the consumer's first test drive.

29% of shoppers use video websites as an information source. As a result of watching a video, 61% visited a dealer!²

Tip 2: Great Compelling Copy



Descriptive Features

(example: "ice cold air conditioning" vs. air conditioning)



Reliability

(confirm nature of use, vehicle reports, maintenance records & warranties)



Customer Focus

(know your sweet spot customer and tell a story – example; great both in the city and for this weekend's next off road adventure)



Offer Incentives

(create a sense of urgency)



Why Buy From Us?

(share your dealership advantage)



Strong Call to Action

(always end with a call to action)

Have a **Great** Headline

A lot of space, with a lot
of power
A rare opportunity for
the classic collector
BRANDNAME is putting
your family first
For today's weekend warrior
For those who don't want to
compromise luxury for practicality

Always Merchandise **Special Features** or **Unique Vehicle Add-ons**

10 way adjustable seats

Winter Tires Included

Tech Package

Bluetooth Enabled

Reverse Sensor

Tow Kit

LTD Edition

Collision Avoidance

Sat Nav

Tip 3: Include the Price



▶ **580%** more clicks on Search Pages

▶ **650%** more clicks on Vehicle Details Page



Do your research



Be competitive



Be consistent



Offer Pricing options

Summary

- 1 Car buyer journey is short and multidimensional
- 2 Online is the most influential of all available channels
- 3 Leverage merchandising best practices to stand out online: photos, videos, great descriptions and pricing

Questions and Answers

TRADER[™]
GO FWD

Thank You

TRADER[™]
GO FWD

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at Toronto

AFFIDAVIT OF ROGER DUNBAR

Goodmans LLP
Barristers & Solicitors
Bay Adelaide Centre
333 Bay Street, Suite 3400
Toronto, ON M5H 2S7

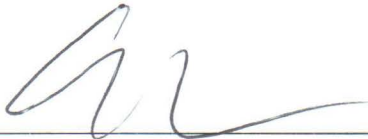
Peter Ruby LSUC#: 38439P
Hannah Arthurs LSUC#: 55337O

Tel: 416.979.2211
Fax: 416.979.1234

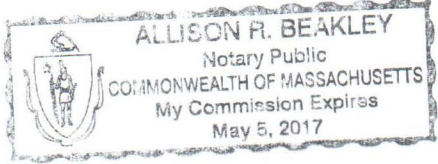
Lawyers for the Applicant

4

This is Exhibit "4" referred to in the Affidavit of Martha Blue sworn before me this 14th day of April, 2016.



Notary Public



Court File No. CV-15-11232-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

BETWEEN:

TRADER CORPORATION

Applicant

- and -

CARGURUS, INC.

Respondent

APPLICATION UNDER SECTION 34(4) OF THE
COPYRIGHT ACT, R.S.C. 1985, c. C-42 AS AMENDED

AFFIDAVIT OF LUCIAN NEACSU

I, Lucian Neacsu, of the City of Toronto, in the Province of Ontario, MAKE OATH AND SAY:

1. I am the Director of Operations for the Applicant, Trader Corporation (“Trader”), and have personal knowledge of the matters contained in this affidavit, except where I have indicated that my knowledge is based on information from others, in which case I believe that information to be true. In preparing this affidavit, I have reviewed the affidavits of Roger Dunbar and Allen Wales.
2. I began my employment with Trader in March 2014. As Director of Operations, I am in charge of the Production, Circulation and Dealer Services departments. The Dealer

Services department is responsible for the photography of dealer vehicles, which we refer to as Trader's Capture service.

The Capture Service and the Trader Photos

3. As noted in the affidavit of Roger Dunbar, in order to compete with other providers, including free marketplace services such as Craigslist, Trader aims to provide premium services to dealers. One such service offered by Trader is its Capture service. While a dealer can photograph its own vehicles and upload those photos to its own website(s) and Trader's websites, if a dealer subscribes to Trader's Capture service, as described further below, Trader has one of its employees, or a contractor who has assigned his or her intellectual property rights to Trader, visit the dealership, consult with the dealer, take photos of the vehicles ("Trader Photos"), gather from the dealer information about the vehicles and, using a software application designed by Trader, organize and upload all of this data for display on one or more of Trader's and the dealer's websites.
4. Trader has invested heavily in its Capture service. In 2011, Trader spent \$3.4 million on providing the Capture service. In 2012, Trader spent \$2.9 million. In 2013, it spent \$3.0 million. In 2014, it spent \$2.4 million. In the first 11 months of 2015, Trader spent \$2 million on providing the Capture service.
5. Hundreds of dealers in Canada have subscribed to Trader's Capture service.
6. In March 2015, Trader also introduced two new services called "Premium Capture" and "Premium Capture +." Premium Capture provides dealers with professional grade Trader Photos, using top of the line equipment. The photos taken under the Premium Capture and

Premium Capture + services are also emblazoned with an "autoTRADER" logo, making them easy to identify. So far a limited number of dealers have signed up for these two new services and approximately 500 vehicles from the Premium Capture and Premium Capture + services are added to Trader's marketplaces each month.

Photographs are Central to Trader's business

7. Taking Trader Photos takes time, skill, effort and originality. The Trader Photos are photographed using equipment supplied by Trader and in accordance with training provided by Trader. Trader currently has 68 full time and part time employees who travel to dealerships to take the Trader Photos. These employees' contracts with Trader do not deal with copyright in the Trader Photos. Trader also has 7 contractors who service very small markets which do not require a full or even part time employee. These employees and contractors are collectively referred to in my affidavit as the "Trader Photographers." The seven contractors, through their contracts with Trader, have wholly and generally assigned all rights to Trader in any Trader Photos they take:

Intellectual Property Ownership. Consultant agrees that all copyrightable Work Products or any other intellectual property arising therefrom prepared, made or conceived by Consultant within the scope of the Services belong to TRADER and that TRADER owns all copyright thereto.

Assignment. Consultant hereby irrevocably assigns (and agrees to assign) to TRADER all of his right, title and interest (including but not limited to all patent, copyright, trademark, and trade secret rights) in and to all Work Products, whether patentable or not, made or conceived in whole or in part by him within the scope of the Services or that relate directly to, or involve the use of, confidential information obtained through the Services. Consultant shall further waive and hereby waives and agrees not to invoke in any manner any moral right(s), or other equivalent non-economic right(s), related to Work Products, and all economic rights to the Work Products shall nevertheless inure to the benefit of TRADER.

[...]

By the present, I transfer to Trader, or any other person or entity designated by Trader, all my rights, titles and interests in all invention, idea, upgrade, illustration, text, picture, computer program or material that could constitute the basis of a patent request or copyright and was conceived or executed by me, alone or in collaboration, during my performance of any services pursuant to the Agreement for Trader to the extent [sic] where these rights, titles or interests are related to methods, machines, concepts, products or mechanism that are sold, rented, used or otherwise studied or developed by Trader or that are related in any other way to the Trader business. I shall inform my immediate supervisor at Trader as soon as I produce a document that could constitute the basis of a patent request or copyright. I agree that, during the term of the Agreement and for the period following its termination, I shall fully cooperate with every procedure of Trader to protect its rights, titles and interests transferred to the latter pursuant to [this provision].

Attached as **Exhibit "A"** is a sample agreement entered into by Trader and one of its contractors. For personal privacy reasons, I have redacted the contractor's name and address and have not included the first page of Schedule A, which deals with the contractor's compensation. All of the agreements entered into by Trader with the Trader Photographers contain this same standard language regarding the assignment of intellectual property rights.

8. Before taking any photos of a customer's inventory, Trader Photographers receive extensive training and are provided with a training manual, a copy of which is attached as **Exhibit "B."** A copy of the training checklist, which summarizes the training Trader Photographers receive, is attached as **Exhibit "C."** Trader Photographers are also shown and provided with copies of training videos. Capture service training videos are included on the CD attached as **Exhibit "D."** Trader Photographers are taught how to frame the photographs, what angles at which to take the photos, which photos to take, the sequence of

photos to take, how to achieve the best lighting and how to reduce glare, among other techniques.

9. Trader Photographers sometimes have to make multiple trips to a dealership to get the right photographs, if, for example, the weather or lighting is not ideal, the vehicle has not been properly cleaned, or other reasons.
10. After taking the photos, Trader Photographers use a software application designed by Trader to organize and upload the vehicle photographs and information to Trader's central database. The photographs and information uploaded to the central database are then quickly copied to Trader's websites and then to the dealers' website(s). This software also allows the Trader Photographers to scan the vehicle's VIN to obtain some basic information about the vehicle and then also manually add additional information such as the vehicle's colour, mileage, price and features. Within approximately 30 minutes after transmitting this data to Trader's database using the software, the listing for the vehicle will be posted on Trader's digital marketplaces.

11. The Trader Photos end up being displayed on at least one of Trader's websites, such as autotrader.ca, and often also on the dealers' own website(s). The Trader Photos and vehicle information captured by Trader Photographers are provided daily to dealers' websites.

SWORN before me at the City of Toronto,
in the Province of Ontario on the 22nd day of
December, 2015



A Commissioner for taking affidavits
Name: *Hannah Arthurs*



Lucian Neacsu

ONTARIO
**SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at Toronto

AFFIDAVIT OF LUCIAN NEACSU

Goodmans LLP

Barristers & Solicitors
Bay Adelaide Centre
333 Bay Street, Suite 3400
Toronto, ON M5H 2S7

Peter Ruby LSUC#: 38439P

Hannah Arthurs LSUC#: 553370

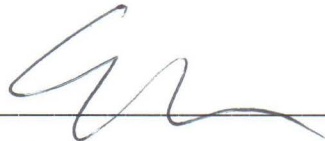
Tel: 416.979.2211

Fax: 416.979.1234

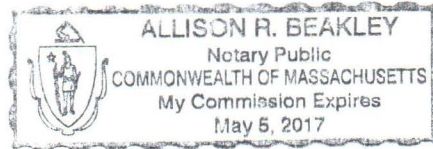
Lawyers for the Applicant

5

This is Exhibit "5" referred to in the Affidavit of Martha Blue sworn before me this 14th day of April, 2016.



Notary Public



Court File No. CV-15-11232-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

BETWEEN:

TRADER CORPORATION

Applicant

- and -

CARGURUS, INC.

Respondent

APPLICATION UNDER SECTION 34(4) OF THE
COPYRIGHT ACT, R.S.C. 1985, c. C-42 AS AMENDED

AFFIDAVIT OF ALLEN WALES

I, Allen Wales, of the City of Port Moody, in the Province of British Columbia, MAKE OATH
AND SAY:

1. I am the Vice President of Technology for the Applicant, Trader Corporation (“Trader”), and have personal knowledge of the matters contained in this affidavit, except where I have indicated that my knowledge is based on information from others, in which case I believe that information to be true. In preparing this affidavit, I have reviewed the affidavits of Roger Dunbar and Lucian Neacsu.
2. I have been an employee of Trader for approximately 13 years. I began my employment with Trader as an Information Technology (“IT”) Manager and was subsequently

promoted to IT Project Manager, Director of Projects, Director of Technology and finally, in April 2012, to my current position, Vice President of Technology.

3. As described in Mr. Dunbar's affidavit, Trader operates what are referred to as "digital marketplaces" for vehicles in Canada. I am responsible for the IT aspects of Trader's digital marketplaces, among other things.

CarGurus' Entry into the Canadian Market

4. CarGurus, Inc. ("CarGurus") operates a website, cargurus.com, that is essentially a search engine for the purchase and sale of new and used vehicles. CarGurus allows private sellers and vehicle dealers to list their vehicles for sale and buyers to search those vehicles.
5. As described in Mr. Dunbar's affidavit, CarGurus entered the Canadian market in May 2015 and Trader received complaints from dealers that their vehicles were appearing on CarGurus' website without their permission. Following these reports, I began an investigation regarding the content being displayed on cargurus.com.
6. By examining data provided by cargurus.com when I electronically queried cargurus.com, it appeared to me that the information about many of the vehicles listed as being for sale in Canada had been copied from other websites by a technique known as "scraping." Scraping involves using computer software to "crawl" an online data source to identify data of interest and to then extract information from that data source. I concluded that many Canadian photos on cargurus.com were scraped from dealer websites based on the fact that many of the vehicle records found on cargurus.com contained in the data field "listingSource" a notation that the vehicle data had been scraped from a dealer website.

Attached as **Exhibit "A"** is a printout showing an example of the notation "listingSource: CarGurusDealerCrawler-0" (I have highlighted that notation in orange).

7. Also, I noted that CarGurus had resized many of the photographs taken by Trader for use on the CarGurus website. Effectively, CarGurus made some of the images smaller without changing their essential visual characteristics.
8. Through my investigation, I also identified some photos that were found on cargurus.com that included an "AutoTrader" logo. Attached and marked as **Exhibit "B"** are three examples of such photos.
9. While the length of time that a Trader Photo remains on a dealer website varies, on average, a Trader Photo remains on a dealer website for approximately 45 days.

Trader's Initial Approach to CarGurus was Rebuffed

10. On June 10, 2015, Trader's intellectual property counsel, Loopstra Nixon LLP, wrote to CarGurus advising that Trader holds the copyright in the contents of autotrader.ca. The letter noted that:

Trader has recently become aware that your company is reproducing and displaying content from the autotrader.ca website, including among other things, a large volume of vehicle listings, on your site at www.cargurus.com. Trader has not authorized these actions.

11. The letter requested that this conduct cease. A copy of this letter is attached as **Exhibit "C."**

12. On June 18, 2015, CarGurus' intellectual property counsel, Bereskin & Parr LLP, responded with a letter marked "Without Prejudice". Trader's position is that this letter is nonetheless admissible, but in order to allow CarGurus to address this point, I have not attached a copy of the June 18, 2015 letter to my affidavit, nor dealt with its content.
13. In any event, Trader subsequently discovered the continued infringing conduct described below, which post-dates June 18, 2015.
14. On June 18, 2015, I had a conference call with Martha Blue and Sam Zales from CarGurus. Ms. Blue is the Senior Vice President of Business Development for CarGurus and Sam Zales is the President of International and Dealer Operations. Also on the call were Roger Dunbar (Vice President of Marketing at Trader) and Robert Rath (Vice President of Business Development for Trader). The conference call lasted for approximately 30 minutes.
15. During the call, I explained that Trader had received a number of complaints from dealers because they thought that Trader had syndicated their inventory to CarGurus without the dealers' permission, and the purpose of the call was to discuss how CarGurus was obtaining this inventory and tracking price changes from Trader managed-dealer websites. Ms. Blue explained that CarGurus operated an opt-out model, so any dealer could request that their inventory be removed from cargurus.com by contacting her directly. I asked Ms. Blue if CarGurus was scraping inventory and photos from autoTrader.ca and Ms. Blue advised that CarGurus was not scraping autoTrader.ca. I asked Ms. Blue if CarGurus was scraping content from dealer websites. She did not answer the question but stated that CarGurus' data comes from a variety of sources, including "partnerships." I repeated the

question again and Ms. Blue replied that she would neither confirm nor deny whether CarGurus was scraping dealer websites. During the call, Ms. Blue also told me that CarGurus has a commercial partnership with the owner of the website dealer.com in the United States, whereby CarGurus licensed the right to display dealer.com's content on cargurus.com.

16. I explained that if requested by a dealer, Trader has a process for licensing what Trader calls "syndication partners" to use content from a dealer website, including photographs for which Trader owns the copyright. Without offering to license content to CarGurus, on July 7, 2015, Mr. Rath sent Ms. Blue a copy of Trader's draft form of syndication agreement for CarGurus' review. On July 8, 2015, Ms. Blue responded that she would not be back in the office until the following week and would not be able to review the agreement until then. However, Ms. Blue never responded to Trader to seek a syndication arrangement or licence for content owned by Trader.
17. CarGurus just kept operating in the Canadian market without any attempt with Trader to deal with the fact that it was basing its entry into the Canadian market on content that did not belong to it and that it knew was the property of others. By taking the opt-out approach described by Ms. Blue, CarGurus avoided the costly sales and marketing effort of building up-front relationships with dealers and obtaining a license to display their inventory.

Investigation Process

18. During the summer and fall of 2015, Trader investigated the extent to which CarGurus was copying data, including photographs for which Trader owned the copyright, from dealer

websites. It was not obvious to me how many vehicle records had been copied and how many included photographs for which Trader owned the copyright.

19. Trader focussed its investigation on photographs of vehicles, because such photographs are copyrighted works, often owned by Trader.
20. Two problems confronted Trader during its investigation. First, Trader wanted to find a sound methodology for collecting the necessary data from cargurus.com in order to establish the extent of any infringement by CarGurus of photographs for which Trader owned the copyright, while at the same time not materially harming the use by others of the cargurus.com website. Second, Trader had to find a sound methodology for comparing the large volume of photographs displayed on the CarGurus website to photographs for which Trader owned the copyright. This second step proved particularly difficult because a straightforward comparison of several hundred thousand CarGurus-displayed photographs to several hundred thousand Trader-owned photographs (“Trader Photos”) required an enormous number of individual comparisons. Trader began by simply trying to compare photos found on the CarGurus website to the Trader Photos, but eventually concluded that this exercise would take months to complete. Trader then began looking for an alternative approach to complete the comparison.
21. In late October 2015, Trader’s litigation counsel retained D’Arcy Woodburn-Davis’ company, SIFT Solutions Inc., to collect, analyze and conduct a comparison of CarGurus-displayed photographs and the Trader Photos. Trader provided Mr. Woodburn-Davis with data for all vehicles that were added to a website administered by Trader between January 1, 2015 and October 18, 2015 and that are photographs taken

under the Capture service described in Mr. Neacsu's affidavit (Trader tracks which photographs were taken under the Capture service). In his affidavit, Mr. Woodburn-Davis describes his efforts and conclusions in that regard.

22. On December 1, 2015, Mr. Woodburn-Davis delivered to Trader a set of 172,875 pairs of photographs. Each pair was made up of an image from cargurus.com and a single Trader Photo. The paired photos were delivered via a website that allowed a human reviewer to manually decide whether the two paired photographs were a visual match and then enter a notation to that effect.
23. Trader assigned several of its staff to manually compare every pair of photographs supplied by Mr. Woodburn-Davis.
24. Trader is providing affidavits from each of its staff who compared a portion of the matched pairs of photographs, as well as copies of all the matching pairs of photographs that were manually reviewed. This way, the Court and CarGurus can see for themselves each infringement.
25. In summary, through the efforts of Mr. Woodburn-Davis and Trader's reviewers, Trader determined that CarGurus copied and displayed to users of cargurus.com at least 144,974 photographs in which the copyright is owned by Trader. These photographs related to 19,258 unique vehicles (typically there are several photographs per vehicle).

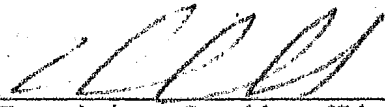
Trader's Second Approach to CarGurus

26. On December 2, 2015, Trader's litigation counsel wrote to CarGurus' counsel describing the infringement of Trader Photos. Without waiving its rights to seek monetary, injunctive

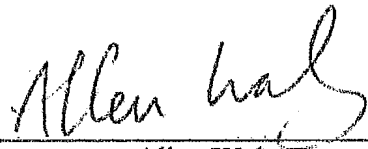
and other relief, Trader demanded that CarGurus cease its infringing conduct. A copy of that letter is attached as **Exhibit "D."**

27. CarGurus has not complied with Trader's demands.

SWORN before me at the City of Burnaby,
in the Province of British Columbia on the
22nd day of December, 2015



A Commissioner for taking affidavits
Name:



Allen Wales

Ryan Copeland
ROPER GREYELL LLP
Employment and Labour Lawyers
800 Park Place, 666 Burrard St.
Vancouver BC, V6C 3P3
604-696-0000

TRADER CORPORATION - and - CARGURUS, INC.
Applicant Respondent

Court File No. CV-15-11232-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at Toronto

AFFIDAVIT OF ALLEN WALES

Goodmans LLP
Barristers & Solicitors
Bay Adelaide Centre
333 Bay Street, Suite 3400
Toronto, ON M5H 2S7

Peter Ruby LSUC#: 38439P
Hannah Arthurs LSUC#: 553370

Tel: 416.979.2211
Fax: 416.979.1234

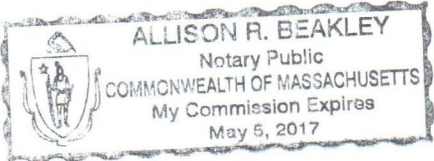
Lawyers for the Applicant

6

This is Exhibit "6" referred to in the Affidavit of Martha Blue sworn before me this 14th day of April, 2016.



Notary Public



Court File No. CV-15-11232-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

BETWEEN:

TRADER CORPORATION

Applicant

- and -

CARGURUS, INC.

Respondent

AFFIDAVIT OF OLIVER CHRZAN

I, Oliver Chrzan, of the City of Cambridge, in the State of Massachusetts, hereby MAKE OATH AND SAY:

1. I am the Senior Vice President Engineering for the Respondent, CarGurus, Inc. ("CarGurus"), and have personal knowledge of the matters contained in this affidavit except where I have indicated that my knowledge is based on information from others, in which case I believe that information to be true.
2. In preparing this affidavit, I have reviewed the affidavit of Martha Blue, Senior Vice President Business Development of CarGurus. In her affidavit, Martha Blue refers to my having provided her with certain information. I confirm that the information I provided to Martha Blue is based on my personal knowledge.
3. I have also reviewed the affidavits of Allen Wales and Roger Dunbar of Trader Corporation ("Trader"), and of D'Arcy Woodburn-Davis.

- 2 -

4. I began working for CarGurus in March 2008 as a Senior Software Developer, and in November 2015, I became the Senior Vice President of Engineering. I now act as the lead for all of the CarGurus engineers for software development, new product ideas, and research and development. During my time at CarGurus we have grown the monthly online traffic on the <http://www.cargurus.com> website from 500,000 visitors to over 15 million monthly visitors.
5. Prior to joining CarGurus, I worked as the Senior Technical Lead at Dovel Technologies from 2006 to 2008, leading a team of 10 engineers in the design, implementation, system testing, and deployment of the United States Food and Drug Administration's Emergency Operations Network. I also worked at Raytheon from 2000 to 2006 as system engineering communications lead on the Patriot Missile program for the United States Department of Defense.
6. I completed my Bachelors of Science in Computer Science in 2000 at Cornell University.

How the CarGurus Websites Source Information

7. The business of CarGurus is the ownership and operation of automotive research websites that assist purchasers of automobiles by allowing them to compare listings for used and new vehicles within a geographic area, and to contact sellers. The websites allow visitors to locate vehicles for sale based on search parameters defined by the visitor.
8. I agree with paragraph 4 of the affidavit of Allen Wales, Vice President of Technology for Trader ("Wales Affidavit") that the CarGurus Website is a search engine.
9. CarGurus has thousands of different data sources that are used to power its websites. These sources can be split into two major categories: direct data feeds and dealership websites.

Direct Data Feeds

10. Direct data feeds are transmitted to CarGurus from third party partners who periodically provide data for inclusion on CarGurus' websites. Such data is typically updated on a daily basis by our partners.
11. CarGurus has direct data feed relationships with many partners, including Dealer Dot Com, Inc. ("DDC"), Strathcom Media, e-Dealer and Boost Motor Group Inc. Feed data from our partners typically includes the make, model, year, Vehicle Information Number ("VIN"), mileage, price, as well as photographs, of each vehicle ("Vehicle Listing") ultimately included on a CarGurus website. As is described in Martha Blue's affidavit, the dealerships whose Vehicle Listings are provided by our partners are expected to either opt-in or opt-out of the feed to CarGurus. In this way individual dealerships control whether their Vehicle Listings are posted on a CarGurus website.
12. To ensure that CarGurus has comprehensive Vehicle Listings for the markets in which it operates, CarGurus employs "crawlers" to search and index data from dealership websites. To my knowledge, the use of crawlers is common to the operation of search engines. For instance, crawlers are used by the Google, Yahoo and Bing search engines.

The CarGurus Crawler

13. The CarGurus crawler software was designed to use an automated multi-step process to search and index data from vehicle dealership websites. This process is described briefly below.

- 4 -

14. First, a CarGurus crawler searches various publicly available directories, such as original equipment manufacturer (“OEM”) websites (e.g. www.ford.com, www.honda.com), telephone directories (e.g. www.yellowpages.com), and other public listings of dealerships (e.g. www.dealerrater.com). The CarGurus crawler thus catalogues all the vehicle dealership names, addresses, and website URLs.
15. Second, the CarGurus crawler validates which websites have vehicles listed for sale. If a dealership website is validated by the crawler, it will traverse the dealership’s website to index and cache all the Vehicle Listing data for the vehicles listed for sale on the website.
16. As a part of our manual validation, we will not crawl a website if the website has robots.txt instructions to explicitly disallow crawling.
17. Third, once the information is indexed, a second validation is conducted to ensure the Vehicle Listing data generated by the crawl is accurate and complete. If that validation is successful, the associated Vehicle Listings are automatically added to the CarGurus online index of vehicles and posted on the CarGurus website and are then publicly available for searching.
18. Fourth, after listing, the CarGurus crawler checks indexed dealership websites to ensure that any changes to the data on the dealership’s website are reflected in the Vehicle Listings on the CarGurus website. If vehicles are sold or removed from a dealership website, CarGurus removes the associated Vehicle Listing from the CarGurus index once the crawler verifies the status of that vehicle.

- 5 -

19. CarGurus' goal is to present visitors to its websites with the most accurate, up-to-date data possible. Where CarGurus obtains Vehicle Listing data about the same vehicle from multiple sources, the data is merged together for the most accurate Vehicle Listing possible, and then posted on the CarGurus website.
20. CarGurus does not modify the data it indexes from direct data feeds or dealership websites, other than for technical reasons. Specifically, CarGurus does not modify any of the photographs other than to re-size them.
21. CarGurus does not attempt to crawl private networks, or websites that explicitly disallow crawling via robots.txt instructions.
22. The CarGurus crawler is also rate-limited (e.g. it crawls websites at regular, well-spaced, staggered intervals) to ensure that the searching and indexing of dealership websites does not adversely affect the performance of the websites.
23. If a dealership does not wish to have its vehicles listed on the CarGurus website, the dealership may request that its Vehicle Listings be removed. CarGurus will remove the dealership website from those being crawled or included in a direct data feed, and will also remove all the Vehicle Listings associated with that dealership within no more than two business days.

Trader's Allegations about CarGurus' Canadian Website

24. The affidavit of Roger Dunbar, Vice President of Marketing for Trader, alleges at paragraph 29 that in May 2015 Trader began to receive complaints from dealerships that their Vehicle Listings were appearing on CarGurus' Canadian website, <http://www.ca.cargurus.com> (the "CarGurus Website").

- 6 -

25. In May 2015, the servers for the CarGurus Website were located in the United States. These servers are still located in the United States. At the time, CarGurus was sourcing Vehicle Listings for the CarGurus Website from direct data feed partners, but was also using its crawler to search and index dealership websites, including websites hosted by DDC. Based on a visit to I made to DDC about two years ago, I believe that the DDC servers are also located in the United States.
26. The CarGurus crawler performed the multi-step process outlined above, and Vehicle Listings from dealership websites were indexed and cached on the CarGurus Website.
27. At no time did CarGurus crawl the Trader websites www.autotrader.ca or www.autohebd0.ca for any Vehicle Listings, including photographs.
28. When crawling dealership websites hosted by DDC, CarGurus did not encounter any robots.txt instructions that disallowed crawling of Vehicles Listings.
29. When crawling other dealership websites, CarGurus did not encounter any robots.txt instructions that disallowed crawling of Vehicle Listings.
30. By way of example, attached hereto as Exhibit "A" is a print-out I made on March 3, 2016 of the robots.txt instructions for the West Coast Toyota dealership website <www.westcoasttoyota.com>, which is hosted by DDC. I note from my review of the robots.txt instructions that the website does not disallow crawling of Vehicle Listings.

Removal of the Alleged Trader Photographs

31. Upon receipt of the December 2, 2015 letter from Trader's counsel in which it alleged that CarGurus copied and communicated to the public at least 150,000 photographs owned by Trader, I understand that our counsel Bereskin & Parr LLP ("Counsel") requested that Trader provide dealership names, or VIN numbers, so that CarGurus could identify the photographs referenced in the letter. Trader did not provide this information.
32. Because of Trader's refusal to provide this information, on December 8, 2015, CarGurus removed all photographs from the CarGurus Website for Canadian Vehicle Listings that were obtained by crawling DDC and not otherwise obtained from data feeds. This resulted in the removal of over 1 million photographs. CarGurus was over inclusive because Trader provided no identifying information for the 150,000 photographs referred to in its December 2, 2015 letter. CarGurus did this in an effort to address Trader's objection prior to any litigation, and without seeing any evidence that Trader actually owns the copyright (if any) in any of these photographs.
33. I note that in its Notice of Application served through Counsel on December 18, 2015, Trader has alleged copyright infringement of 144,974 photographs. These photographs are not identified in the Notice of Application.
34. I am advised by Counsel that Trader served most of its evidence on December 22, 2015. However, because of the Christmas and New Year Holidays, copies of the exhibits to the affidavits were not received by CarGurus until the first week of January 2016.

- 8 -

35. In the first week of January I reviewed the exhibits to Mr. Woodburn-Davis' affidavit ("Woodburn-Davis Affidavit"), including the USB key of Exhibit "T". I note that on the USB key there are URLs to the CarGurus Website provided for only about 137,000 photographs. I do not know why roughly 7,000 URLs for the other photographs are missing. Without URLs CarGurus cannot determine if these photographs were or were not on the CarGurus Website.
36. To confirm that the photographs removed by CarGurus on December 8, 2015 included all of the photographs at issue, I reviewed all of the Canadian Vehicle Listings resulting from direct data feeds from our partners and resulting from crawling dealership websites that had been posted to the CarGurus Website in 2015. Determining the source of the photographs required a review of thousands of gigabits of data and took several days.
37. From this review I confirmed that all of the photographs for which URLs were provided on the USB key, had been removed from the CarGurus Website, except as discussed below. I believe that this includes the roughly 7,000 photographs for which no URLs were provided by Trader, since CarGurus had removed over one million photographs, but cannot know for sure unless Trader provides the missing URLs.
38. Based on my review, I confirmed that approximately 103,000 of the photographs (that were part of Vehicle Listings obtained by crawling DDC) were removed on December 8, 2015. The remaining approximately 40,000 photographs could only be identified after I received the USB key containing the URL information for the photographs at issue. These photographs were removed by no later than January 16, 2016. Once removed, none of these photographs was viewable by the public conducting a search of the CarGurus Website.

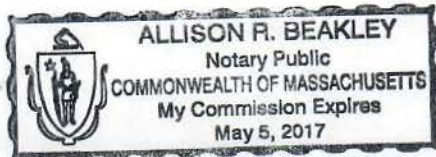
- 39. CarGurus also de-activated the URLs to the photographs for which Trader had provided URL information. CarGurus had intended to de-activate all of the URLs, but about 40,000 URLs inadvertently remained active until January 16, 2016, when they were deactivated.
- 40. On February 9, 2016 I discovered that despite my best efforts, 483 URLs had not been deactivated. I ensured they were deactivated that day.
- 41. After January 16, 2016, none of the photographs on the USB key of Exhibit "T" to the Woodburn-Davis Affidavit was publicly available for searching. With respect to the 483 URLs that remained active until February 9, 2016, the related photographs could only be located if an individual knew the specific URL associated with each photograph (such as, for example, <https://protect-eu.mimecast.com/s/Gx6tBLdrvs3>), and entered that URL into a web browser. In other words, they would not have been revealed by a search of the CarGurus Website.
- 42. In summary, CarGurus acted as promptly as possible to address the concerns raised by Trader, without Trader providing full information to help CarGurus identify the photographs at issue prior to December 22, 2015, and without seeing any evidence of copyright ownership. I can also advise the Court that none of the photographs with URLs identified on the USB key Exhibit "T" to the Woodburn-Davis Affidavit are viewable on the CarGurus Website, that to the best of my knowledge none of the roughly 7,000 photographs for which Trader did not provide URLs are viewable on the CarGurus Website, and that to the best of my knowledge all of the related URLs for all the photographs at issue have been deactivated.

SWORN BEFORE ME at the)
 City of Cambridge, in the State)
 of Massachusetts, this 3rd day)
 of March, 2016)




 OLIVER CHRZAN

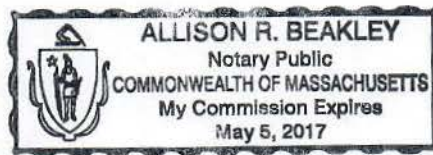
 Notary Public



THIS IS EXHIBIT "A" MENTIONED AND REFERRED TO IN THE AFFIDAVIT OF OLIVER CHRZAN SWORN BEFORE ME THIS 3RD DAY OF MARCH, 2016.



Notary Public



westcoasttoyota_robots.txt
User-agent: Imagewalker
Disallow: /

User-agent: gsa-crawler
Disallow: /

User-agent: OmniExplorer_Bot
Disallow: /

User-agent: Baiduspider
Disallow: /

User-agent: Yandex
Disallow: /

User-agent: trovitBot
Disallow: /

User-agent: RealSpider
Disallow: /

User-agent: Updownerbot
Disallow: /

User-Agent: MJ12bot
Crawl-Delay: 20
Disallow: /tcd/
Disallow: /microsite/
Disallow: /*ajax.htm\$
Disallow: /*fragment.htm\$
Disallow: /image/viewer.htm

Sitemap: <https://protect-eu.mimecast.com/s/MrDiBG6JNH9>

Sitemap: <https://protect-eu.mimecast.com/s/Om2IBOW0qCd>

User-agent: Slurp
Crawl-Delay: 10
Disallow: /tcd/
Disallow: /microsite/
Disallow: /*ajax.htm\$
Disallow: /*fragment.htm\$
Disallow: /image/viewer.htm

User-agent: *
Crawl-Delay: 3
Disallow: /tcd/
Disallow: /microsite/
Disallow: /*ajax.htm\$
Disallow: /*fragment.htm\$
Disallow: /image/viewer.htm

TRADER CORPORATION

- and -

CARGURUS, INC.

Applicant

Respondent

Court File No. CV-15-11232-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding Commenced at Toronto

**AFFIDAVIT OF OLIVER CHRZAN
(Sworn March 3, 2016)**

BERESKIN & PARR LLP/S.E.N.C.R.L., s.r.l.
Barristers & Solicitors
Scotia Plaza, 40th Floor
40 King St. West
Toronto, ON M5H 3Y2

Jonathan G. Colombo
(LSUC # 32188W)
Amrita V. Singh
(LSUC # 64232R)

Tel: (416) 364-7311
Fax: (416) 361-1398

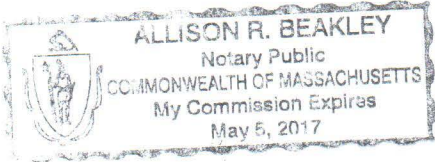
Lawyers for CarGurus, Inc.

7

This is Exhibit "7" referred to in the Affidavit of Martha Blue sworn before me this 14th day of April, 2016.



Notary Public



Court File No. CV-15-11232-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

B E T W E E N:

TRADER CORPORATION

Applicant

- and -

CARGURUS, INC.

Respondent

APPLICATION UNDER SECTION 34(4) OF THE
COPYRIGHT ACT, R.S.C. 1985, c. C-42 AS AMENDED

REPLY AFFIDAVIT OF ROGER DUNBAR

I, Roger Dunbar, of the City of Toronto, in the Province of Ontario, MAKE OATH AND SAY:

1. I previously swore an affidavit dated December 22, 2015 in this proceeding (my "First Affidavit"). This affidavit is supplementary to and should be read in conjunction with my First Affidavit and uses the same capitalized terminology except where I use new defined terms below.
2. I have personal knowledge of the matters contained in this affidavit, except where I have indicated that my knowledge is based on information from others, in which case I believe that information to be true.

3. In preparing this affidavit, I have reviewed the affidavits of Martha Blue, Oliver Chrzan, Lori-Anne Deborba, Samuel Zales and Jonathan Levine, delivered by CarGurus.

Trader is an Intermediary

4. At paragraph 11 of my First Affidavit, I stated that “Trader is at the center of the car buying process in Canada, connecting consumers, dealers and original equipment manufacturers.” Contrary to the assertions at paragraphs 64 and 74 of the affidavit of Martha Blue (the “Blue Affidavit”), this statement was in no way intended to be an admission or acknowledgement that Trader is the dominant digital marketplace in Canada, or that it exerts any sort of dominance. By using the words “at the center of the car buying process”, I meant that Trader acts as an intermediary between buyers and sellers of vehicles and brings those parties together on its website and dealer websites.

Size of Trader’s Digital Marketplace

5. At paragraph 14 of my First Affidavit, I stated that over the last 12 months, Trader’s marketplaces contained, on average by week, approximately 5,300 commercial sellers of vehicles. At paragraph 69 of the Blue Affidavit, Ms. Blue states that Trader appears to have a relationship with 6,218 dealers in Canada as of January 30, 2016, based on the ‘dealer locator’ function on the Trader website. The ‘dealer locator’ function on the Trader website is not intended to provide an accurate estimate of the number of active dealers with which Trader has a relationship at a given point in time, and may include private sellers and dealers who are no longer operating.

6. At paragraph 71 of the Blue Affidavit, Ms. Blue states that CarGurus believes that Trader has the exclusive control of an estimated 42.5% of all vehicle listings in Canada. I disagree that there is any such thing as “Trader-controlled inventory”, as referred to in paragraph 72 of the Blue Affidavit. Trader does not have exclusive control of any vehicle listings. Many customers listing vehicles with Trader also list their vehicles with other digital marketplaces. For example, at the request of some dealers, Trader provides those dealers’ content to others (in a process called syndication, which is discussed below). Some dealers also directly list their vehicles in multiple digital marketplaces. Also, Trader has not claimed copyright in any photographs that were not taken under its Capture program. The vast majority of vehicle dealers in Canada do not subscribe to Trader’s Capture program. Moreover, even for dealers who subscribe to Trader’s Capture program, there is nothing in their agreement with Trader preventing them from also having CarGurus take photographs of their vehicles to be posted on the CarGurus website.

7. I note that Kijiji claims in its advertising material that it has the largest automotive digital marketplace in Canada. Below is a screen capture from a Kijiji television commercial posted to YouTube by Kijiji Canada that I took on March 23, 2016:



Syndication

8. At paragraph 27 of my First Affidavit, I noted that sometimes dealers want to license their vehicle listings to competitors of Trader, and those dealers make individual marketing contracts with competitors. Then, in order to facilitate the actual provision of the vehicle listing data between competitors, a practice has developed whereby a dealer may request that as an administrative convenience, Trader provide that data. This process is called “syndication” and is the subject of syndication agreements.
9. Generally speaking, if a dealer asks Trader to syndicate its content to another website, Trader does not just automatically do so. Rather, Trader waits for a critical mass of dealers

to request syndication to that third party, or for a very large dealer-customer to ask Trader to syndicate its content. Entering into syndication agreements and setting up syndication feeds is time consuming and Trader generally does not make this effort, unless it is requested by a critical mass of dealers. For example, in the last two months, Trader has rejected three non-CarGurus syndication requests. Two were requests to syndicate to AutoNet, and the third was a request to syndicate to RyanTech. These requests were rejected because Trader does not have a syndication agreement with either AutoNet or RyanTech.

10. As I described in my First Affidavit, Trader sent CarGurus a proposed form of syndication agreement in July 2015. Attached as Exhibit "A" is a copy of the proposed syndication agreement and cover email that was sent to CarGurus on July 7, 2015. The form of agreement sent to CarGurus was Trader's standard form agreement that would have been sent to any potential non-reciprocal syndication partner at first instance at that time (non-reciprocal meaning that Trader was not anticipating receiving a data feed from CarGurus). In my experience, the entering into of a syndication agreement always involves some level of negotiation. Contrary to paragraph 112 of the Blue Affidavit, nothing in the syndication agreement sent to CarGurus in July 2015 was designed to "target" CarGurus. Contrary to paragraphs 76 and 111 of the Blue Affidavit, Trader has not "refused" to allow CarGurus to access Trader's copyrighted material on commercially reasonable terms. At no time did Trader indicate to CarGurus that the draft syndication agreement was a 'take it or leave it' proposition. But instead of negotiation, when Trader provided its form of agreement, CarGurus helped itself to the Trader Photos without permission.

11. At paragraph 133 of the Blue Affidavit, Ms. Blue alleges that CarGurus has a list of at least 30 dealers who would like to work with CarGurus but cannot because of Trader's refusal to consent to syndication of their inventory to CarGurus. Ms. Blue has not provided the names of any of the dealers who have allegedly complained to CarGurus, but I note that Trader has been approached by 36 dealers who would like their inventories to be syndicated to CarGurus. Once the matters at issue in this proceeding are resolved, Trader is open to negotiating with CarGurus with respect to a syndication agreement (assuming there is at that time the critical mass of dealer syndication requests described above).

Assignment or License of Trader's Rights

12. At paragraph 28 of my First Affidavit, I stated that Trader has not assigned its copyright interests in the Trader Photos to any person, nor has it licensed or permitted its licensees to sub-license, the Trader Photos to CarGurus. CarGurus has claimed that it has a direct data feed with Dealer Dot Com, Inc. ("DDC"). I confirm that Trader has not assigned its copyright interests in the Trader Photos to DDC, nor has it granted DDC the ability to license or sublicense any of the Trader Photos to any third parties, including CarGurus.
13. Attached as Exhibits "B" and "C" are copies of correspondence between counsel for CarGurus and counsel for Trader dated January 14 and 17, 2016, respectively. In its correspondence, counsel for CarGurus requested a copy of the current draft Trader Master Services Agreement between Trader and a dealer, which was provided by Trader, and is included at Exhibit "C."

Dealer Complaints

14. In my First Affidavit, I described how Trader had received complaints from dealer customers about their vehicles being displayed on CarGurus' website without their authorization. At paragraph 132 of the Blue Affidavit, Ms. Blue states that it is not clear to CarGurus why dealers complained to Trader about CarGurus, "if they actually did." Since my First Affidavit, Trader has received additional dealer complaints regarding CarGurus.
15. For example, I was advised by Mathieu Veilleux (Trader Sales Manager, Québec) via email that on March 10, 2016, he was informed by Group Duval that they were very frustrated that CarGurus had taken Group Duval's inventory without approval and that the process to have their inventory removed from the CarGurus website had been frustrating and involved multiple requests to CarGurus.
16. Similarly, I was advised by Matt Lawson (Trader's Director of Sales, National Dealer Groups) that on February 1, 2016, he received a call from Bourk Boyd (a Chrysler dealer) and Mr. Boyd stated that he was going to commence an action against CarGurus unless they took down his inventory immediately.

17. I have also learned of another complaint made by Mitch Coutu, a Director with the March Group, to Natalie Novak (a Trader Sales Manager) on January 19, 2016. Mr. Coutu noted that CarGurus was reprinting his ads without consent and causing March Group grief.

SWORN before me at the City of Toronto,
in the Province of Ontario on the 24th day of
March, 2016



A Commissioner for taking affidavits
Name: Hannah Arthurs



Roger Dunbar

A

This is Exhibit "A" referred to in the Affidavit of Roger Dunbar
sworn March 24, 2016



Commissioner for Taking Affidavits (or as may be)

HANNAH ARTHURS

From: Robert Rath <robert.rath@trader.ca>
Date: Tuesday, July 7, 2015 at 8:39 AM
To: "marty@cargurus.com" <marty@cargurus.com>
Cc: Allen Wales <Allen.Wales@trader.ca>
Subject: Data Agreement

Hi Marty, I am following up on our meeting last month please find enclosed a copy of our standing data agreement for your review.

Regards

Robert Rath | VP, Dealership Products & Business Development
TRADER Corporation

Phone: 416.784.5200 ext. 3364
Email: robert.rath@trader.ca
Web: www.tradercorporation.com

DATA FEED AGREEMENT

THIS DATA SYNDICATION AGREEMENT (this "Agreement") is made as of June __, 2013 (the "Effective Date"),

B E T W E E N:

_____, a corporation incorporated [under the laws of Canada], (the, "Syndication Partner")

– and –

TRADER CORPORATION, a corporation amalgamated under the laws of Canada, ("Trader")

WHEREAS the Syndication Partner offers online classifieds in a variety of categories, including cars & other passenger vehicles;

AND WHEREAS Trader collects and maintains certain data with respect to the inventory of its Dealerships;

AND WHEREAS the parties desire for Trader to deliver the Trader Data for listing (in the form of classifieds listings) on the website located at [www.XXX.ca] (the "Syndication Partner Website"), as more fully set forth in this Agreement.

AND WHEREAS the parties desire for the Syndication Partner to deliver the Syndication Partner Data to Trader for listing on the website located at [www.autotrader.ca] (the "Trader Website") and as more fully set forth in this Agreement. [DRAFT NOTE: any other Trader websites? What about autohebdo.ca?]

NOW THEREFORE in consideration of the mutual covenants contained herein, and other good and valuable consideration, the parties hereby agree as follows:

ARTICLE 1
DEFINITIONS

1.1 Definitions.

In this Agreement, in addition to terms defined elsewhere in this Agreement, the following terms have the following meanings:

- 1.1.1 "Affiliate" has the meaning given to that term in the *Business Corporations Act* (Ontario).
- 1.1.2 "Dealership" means each of Trader's motor vehicle dealers, wholesalers and/or dealerships that have subscribed to DSS.
- 1.1.3 "DSS" means Trader's proprietary dealer SMART solutions suite of products and services.

- 1.1.4 “**Listing**” means, in the case of Trader Data, a Participating Dealership’s classified vehicle listing on the Syndication Partner Website and, in the case of the Syndication Partner Data, a Dealership’s classified vehicle listing on the Trader Website.
- 1.1.5 “**Participating Dealership**” means a Dealership who (i) has signed a Syndication Agreement, and (ii) through DSS, has authorized Trader to syndicate its Trader Data to the Syndication Partner Website.
- 1.1.6 “**Syndication Agreement**” means Trader’s syndication agreement, the form of which is attached hereto as Exhibit A and governs Trader’s syndication of the Dealership’s Trader Data to third party media.
- 1.1.7 “**Syndication Partner Data**” means the photographs, information and other available data howsoever relating to the motor vehicle inventory in the Prescribed Categories of Dealerships, including without limitation, the following data for each vehicle (and any marks, logos and other branding elements incorporated therein): Dealership ID; Dealership website link; year; make; model; colour (exterior and interior); style/trim; fuel type; engine size; transmission type; number of doors; features and any other descriptive elements; vehicle price; and the Tracking Details.
- 1.1.8 “**Syndication Support & Service Fee**” means, in a given month, the aggregate amount of \$5.00 (inclusive of any applicable taxes) per Participating Dealership during such month; provided that the Participating Dealership’s Trader Data has been syndicated to the Syndication Partner Site, all in accordance with this Agreement, for no less than one (1) full calendar month. For greater certainty, in the event a Participating Dealership is on-boarded to the Syndication Partner Site mid-month, the Syndication Support & Service Fee in respect of that particular Participating Dealership shall not apply in that month (nor shall it be pro-rated).
- 1.1.9 “**Term**” means the Initial Term and each Renewal Term, if applicable.
- 1.1.10 “**Tracking Fee**” means the fee payable to Trader by a Participating Dealership to syndicate its Trader Data to the Syndication Partner Website.
- 1.1.11 “**Trader Data**” means the photographs, information and other available data howsoever relating to the motor vehicle inventory in the Prescribed Categories of Participating Dealerships, including without limitation, the following data for each vehicle (and any marks, logos and other branding elements incorporated therein): Dealership ID; Dealership website link; year; make; model; colour (exterior and interior); style/trim; fuel type; engine size; transmission type; number of doors; features and any other descriptive elements; vehicle price; and the Tracking Details.
- 1.1.12 “**Trader Marks**” mean the Trader trademarks and logos, as may be provided by Trader to be used in connection with this Agreement.
- 1.1.13 “**Tracking Details**” means the tracking phone numbers and e-mail addresses included in any data delivered to the Syndication Partner Website or the Trader Website, as applicable.

ARTICLE 2
THE TRADER DATA FEEDS

2.1 License to the Trader Data.

- 2.1.1 Subject to the terms and conditions of this Agreement, Trader hereby grants to the Syndication Partner: (i) a royalty-free, non-exclusive right and license to use, reproduce, distribute, publicly display and publicly perform, during the Term, all or part of the Trader Data to create (and for inclusion in) the Listings and to otherwise facilitate the Listing process for Participating Dealerships; and (ii) in connection with any Listings, a royalty-free, non-exclusive, perpetual, irrevocable right to exercise the copyright, publicity, and database rights to the Trader Data therein in accordance with Section 2.5.
- 2.1.2 For certainty the license granted pursuant to Section 2.1.1. shall not:
- 2.1.2.1 permit the Syndication Partner to use, reproduce, distribute or publicly display the Trader Data other than solely through the Listings on the Syndication Partner Website; and
 - 2.1.2.2 permit the Syndication Partner to providing or sublicense the Trader Data to any third party for any purpose whatsoever.
- 2.1.3 The Syndication Partner will not, and is expressly prohibited from using alternative means (including, but not limited to, the use of robots, spiders or scraping) to obtain the Data from Trader, other than as contemplated under this Agreement; provided however that, for greater certainty, Trader acknowledges and agrees that nothing in this Agreement will prevent or restrict the Syndication Partner from obtaining and using any data obtained from a source other than Trader.

2.2 Delivery and Format of Trader Data.

- 2.2.1 Trader will make the Trader Data available to the Syndication Partner, at no cost to the Syndication Partner, in the manner and format determined in the sole discretion of Trader. Trader will update the Trader Data made available to the Syndication Partner on a regular basis and will endeavour in good faith to provide updates no less frequently than daily. Trader acknowledges and agrees that in no event is the Syndication Partner obligated to access or use the Trader Data.
- 2.2.2 Trader shall notify the Syndication Partner in writing or by email in the event that a Participating Dealership has withdrawn its authorization to syndicate its Trader Data to the Syndication Partner Website (in which case, that Dealership will no longer be a Participating Dealership hereunder).
- 2.2.3 Trader will use commercially reasonable efforts to ensure that the Trader Data is accurate in that the Trader Data shall reflect the information provided to Trader by the applicable Participating Dealership. In the event an inaccuracy is brought to Trader's attention and, after investigation by Trader, it is determined that such inaccuracy is a data error caused by Trader, Trader will use commercially reasonable efforts to promptly correct such inaccuracy.

- 2.2.4 The Syndication Partner will use commercially reasonable efforts to ensure that after the Trader Data is provided to it by Trader, the Syndication Partner shall not cause any inaccuracies in the Trader Data that did not exist at the time the Trader Data was provided to the Syndication Partner by Trader. In the event an inaccuracy is brought to the Syndication Partner's attention and, after investigation by the Syndication Partner, it is determined that such inaccuracy is a data error caused by the Syndication Partner, the Syndication Partner will use commercially reasonable efforts to promptly correct such inaccuracy.
- 2.2.5 Trader has created, and will develop any additional software, web sites, methodology, processes, forms and equipment required to facilitate the access to, and transfer of, the Trader Data by and to the Syndication Partner in accordance with this Agreement. During the Term, the Tracking Details, together with all hardware, software and other systems necessary for the Syndication Partner to access and receive the Trader Data from Trader, will be free from material defects and operate in substantial conformity with generally accepted performance standards within the industry. The parties shall work cooperatively with each other on resolving technology issues that may arise in the performance of this Section 2.2.
- 2.2.6 The Syndication Partner may re-format the Trader Data to be presentable for display as (or within) Listings, as may be necessary to conform and adapt the Trader Data to the technical requirements of the Syndication Partner Website, connecting networks, devices, services or media; provided however that the Trader Data shall not be edited or altered by the Syndication Partner in a manner that misleads or distorts the original content.

2.3 Participating Dealership Fees

- 2.3.1 Trader will charge Participating Dealerships directly for any applicable Tracking Fees at a price to be determined in Trader's sole discretion subject to Section 2.3.2.
- 2.3.2 For greater certainty, the only fee payable to Trader by a Participating Dealership to syndicate its Trader Data to the Syndication Partner Website shall be the Tracking Fee. In no event will a Participating Dealership's Tracking Fee exceed (i) \$20/week, or (ii) the aggregate of any and all fees payable to Trader by a Participating Dealership to syndicate its Trader Data to any third party site.
- 2.3.3 Trader will provide and administer Syndication Agreements directly to Dealerships (i.e. prospective Participating Dealerships) for completion and execution by such Dealerships; provided however that Trader hereby expressly authorizes the Syndication Partner to provide, in the Syndication Partner's sole discretion, Syndication Agreements directly to Dealerships (i.e. prospective Participating Dealerships) for completion and execution by such Dealerships. Trader agrees that the Syndication Partner is in no way responsible for, and the Syndication Partner hereby disclaims any and all liability with respect to, the Syndication Agreements. Trader shall comply with the Syndication Partner's policies and instructions from time to time in connection with any use of and access to the Syndication Partner's Salesforce in connection with this Section 2.3.3. For purposes of this Section 2.3.3, "Salesforce" means the customer relationship management product of Salesforce.com Inc. and its Affiliates, including any related application (such as Adobe EchoSign for Salesforce) as licensed to (or for the benefit of) the Syndication Partner.
- 2.3.4 Without limitation to anything in Section 2.5, the Syndication Partner shall charge Participating Dealerships with respect to their Listings on the Syndication Partner Website

according to the schedule and terms as determined by Syndication Partner in its sole discretion.

- 2.3.5 The Syndication Partner shall pay the Syndication Support & Service Fee to Trader on a monthly basis. Upon completion of each month of the Term, Trader shall send to the Syndication Partner an invoice in the amount of the Syndication Support & Service Fee for the previously completed month, and Syndication Partner shall pay the Syndication Support & Service Fee for such previously completed month to Trader within thirty (30) days of receiving such invoice.

2.4 Support.

It is agreed and understood that Trader, on the one hand and, the Syndication Partner on the other hand, will each act in good faith and cooperate to their mutual benefit to enhance the Participating Dealerships efficiency and satisfaction by delivery, at each party's own cost and expense, of technical support services of high quality.

2.5 The Syndication Partner Policies.

Trader acknowledges and agrees that Participating Dealerships' use of the Syndication Partner Website, together with any Trader Data that is made available to the Syndication Partner and displayed as (or as part of) Listings, shall be subject to the Syndication Partner's then-current terms of use and privacy policy applicable to the Syndication Partner Website, it being further acknowledged that the Syndication Partner may amend such terms of use and privacy policy from time to time provided that such policy shall comply with applicable Canadian privacy legislation. Without limitation to the foregoing, the Syndication Partner reserves the unrestricted right to, without any liability, cancel, suspend or discontinue display of any Listing (or any Trader Data therein) on the Syndication Partner Website which violates the then-current terms of use or privacy policy applicable to the Syndication Partner Website.

2.6 Attribution and Tracking Details

- 2.6.1 Syndication Partner will provide attribution on each ad page in the form of a link that points to the original ad on autoTRADER.ca. These links must be crawlable by search engines and must not have the attribute of "nofollow" to ensure proper attribution is passed to the original autoTRADER.ca page. Where the data fee is provided from Trader, the Syndication Partner will provide attribution rights on each Syndication Partner vehicle detail page in the form of a logo link as approved by Trader that states "Info Provided by autoTrader.ca". Syndication Partner, at its own cost, will use commercially reasonable efforts to develop a working sample of the attribution required by the foregoing sentence for the vehicle detail page within thirty (30) days of the Effective Date.
- 2.6.2 Syndication Partner will add Trader supplied Tracking Details to each listing page for all Participating Dealerships and will not replace or augment any Tracking Details supplied by Trader during the term. In addition, Syndication Partner may provide its own Syndication Partner call tracking number for telephone calls ("**Syndication Partner Tracking Details**") that will be forwarded to the designated Trader call tracking number. Syndication Partner may not include its "this call may be recorded" feature for such Syndication Partner Tracking Details. Syndication Partner shall utilize the provided Trader email address from the Tracking Details for email leads on the Syndication Partner vehicle detail page email button.

2.7 Ownership.

As between the Syndication Partner and Trader: (i) the Syndication Partner retains all rights, title and interest in and to all intellectual property rights embodied in or associated with the Listings (except for the elements thereof owned or contributed by Trader, as set out in Section 2.7(ii)), the Syndication Partner Website, the Syndication Partner Marks, and any and all the Syndication Partner services; and (ii) except as expressly set out in this Agreement, Trader and its suppliers retain all rights, title and interest in and to all intellectual property rights embodied in or associated with the Trader Data, DSS, the Trader Marks and any and all Trader services. There are no implied licenses under this Agreement, and any rights not expressly granted hereunder are expressly reserved.

ARTICLE 3 REPRESENTATIONS, WARRANTIES AND COVENANTS

3.1 Covenants, Representations and Warranties of the Syndication Partner.

The Syndication Partner does hereby represent, warrant and covenant throughout the Term that: (i) it has all necessary corporate power, authority and capacity to execute, deliver and perform its obligations under this Agreement; (ii) it will comply with any applicable federal and provincial laws, regulations and ordinances in the performance of its obligations under this Agreement; (iii) it has performed the integration work necessary to cause Listings to be listed on the Syndication Partner Website; (iv) it is the owner, or a licensee with a right of sublicense, of all of the software, methodology, processes, forms and/or equipment used in connection with the Syndication Partner Website, and such items do not infringe the intellectual property rights of any person or entity; (v) it will not directly or indirectly with the assistance of any third party, at any time during the Term or thereafter, for any reason whatsoever, use (other than in accordance with the terms of this Agreement), copy, modify or reverse engineer any aspect of Trader's proprietary software (including the source code) relating to DSS; (vi) it has secured all rights necessary to transfer the Syndication Partner Data to Trader and to allow the Syndication Partner Data to be listed on the Trader Website; and (vii) the Syndication Partner Data does not contain, and shall continue to remain free from, any viruses, disabling code or any other feature that is intended to damage, detrimentally interfere with, surreptitiously intercept or expropriate any system, data or personal information from Trader's internal systems.

3.2 Covenants, Representations and Warranties of Trader.

Trader does hereby represent, warrant and covenant throughout the Term that: (i) it has all necessary corporate power, authority and capacity to execute, deliver and perform its obligations under this Agreement, and its entering into of this Agreement and/or its performance hereunder will not violate terms of any other agreement that it has with a third party; (ii) it will comply with any applicable federal and provincial laws, regulations and ordinances in the performance of its obligations under this Agreement; (iii) it will not directly or indirectly with the assistance of any third party, for any reason whatsoever, use (other than in accordance with the terms of this Agreement), copy, modify or reverse engineer any aspect of the Syndication Partner's in house system or software (including the source code); (iv) it has secured all rights necessary to transfer the Trader Data to the Syndication Partner and to allow

the Trader Data to be listed on the Syndication Partner Site; and (v) the Trader Data does not contain, and shall continue to remain free from, any viruses, disabling code or any other feature that is intended to damage, detrimentally interfere with, surreptitiously intercept or expropriate any system, data or personal information from the Syndication Partner's internal systems.

3.3 Disclaimer.

EXCEPT AS EXPRESSLY STATED HEREIN, EACH PARTY DISCLAIMS ALL WARRANTIES AND CONDITIONS, EXPRESSED, IMPLIED OR STATUTORY, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. EXCEPT AS EXPRESSLY STATED HEREIN, THE SYNDICATION PARTNER WEBSITE, AND THE DATA ARE PROVIDED "AS IS". THE SYNDICATION PARTNER DOES NOT REPRESENT OR WARRANT THAT THE SYNDICATION PARTNER WEBSITE WILL OPERATE SECURELY OR WITHOUT INTERRUPTION.

ARTICLE 4 LIMITATION OF LIABILITY AND INDEMNIFICATION

4.1 Trader Indemnification.

Without limitation to anything otherwise set out in this Agreement, Trader hereby agrees to defend, indemnify and hold harmless the Syndication Partner, its Affiliates, their respective officers, directors, agents and employees, from any and all liabilities, losses, expenses, damages, and costs (including, without limitation, reasonable attorneys' fees) that may at any time be incurred by any of them by reason of any third party claims, actions, suits or proceedings ("**Claims**") relating to or arising out of: (i) breach by Trader of any of its representations, warranties or obligations hereunder; (ii) the infringement by the Trader Marks or the Trader Data of a patent, copyright, trademark right or other intellectual property right of a third party; and (iii) Trader's gross negligence, willful misconduct or fraudulent actions. For certainty, and notwithstanding any other provision in this Agreement, Trader shall not be liable for any inaccuracies in the Trader Data that are the result of a Participating Dealership providing inaccurate information.

4.2 The Syndication Partner Indemnification.

the Syndication Partner hereby agrees to defend, indemnify and hold harmless Trader, its Affiliates, and their respective officers, directors, agents and employees from any and all liabilities, losses, expenses, damages, and costs (including, without limitation, reasonable attorneys' fees) that may at any time be incurred by any of them by reason of any Claims relating to or arising out of: (i) breach by the Syndication Partner any of its representations, warranties or obligations hereunder; (ii) the Syndication Partner's gross negligence, willful misconduct or fraudulent actions; and (iii) the infringement by the Syndication Partner Marks or Syndication Partner Data of a copyright, trademark right or other intellectual property right of a third party. For certainty, and notwithstanding any other provision in this Agreement, Syndication Partner shall not be liable for any inaccuracies in the Syndication Partner Data that are the result of a Dealership providing inaccurate information.

4.3 Procedure.

Any claim for indemnification hereunder shall be subject to the following provisions: (i) each party shall be given prompt written notice of the claim by the indemnified party, provided that any delay in providing notice shall not relieve the indemnifying party of its indemnity obligations under this Agreement unless, and only to the extent, the indemnifying party was prejudiced by the delay; (ii) the indemnifying party shall have the right to control the defense and all negotiations relative to the settlement of any such claim, provided that it diligently undertakes such defense and that no settlement admitting liability on the part of the indemnified party or limiting the indemnified party's rights hereunder may be made without the express written consent of the indemnified party; and (iii) the indemnified party shall reasonably cooperate with the indemnifying party and its counsel at the indemnifying party's cost and expense.

4.4 Limitation of Liability.

EXCEPT WITH RESPECT TO CLAIMS THAT ARE SUBJECT TO INDEMNIFICATION UNDER SECTIONS 4.1 OR 4.2, AND FOR CLAIMS THAT ARISE OUT OF A BREACH OF CONFIDENTIALITY, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY: (i) WHETHER BASED IN CONTRACT, TORT, WARRANTY, OR ANY OTHER LEGAL OR EQUITABLE GROUNDS, FOR ANY LOSS OF THE INCOME, PROFIT OR SAVINGS OF THE OTHER PARTY OR ITS AFFILIATES, FOR ANY CONSEQUENTIAL DAMAGES, OR FOR ANY EXEMPLARY OR SPECIAL DAMAGES OF ANY KIND, EVEN IF THE OTHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES; OR (ii) IN AN AMOUNT GREATER THAN \$100,000.

ARTICLE 5 TERM AND TERMINATION

5.1 Term.

Subject to being earlier terminated pursuant to the provisions of this Agreement, the initial term of this Agreement shall begin on the Effective Date, and shall continue for a period of one (1) year (the "**Initial Term**"). This Agreement will thereafter automatically renew for additional successive one (1) year periods (each a "**Renewal Term**") unless either party provides written notice to the other of its intent not to renew at least thirty (30) days prior to the expiration of the Initial Term or the then-current Renewal Term.

5.2 Termination for Default and Otherwise.

Either party may terminate this Agreement: (i) if the other party breaches or is in default of any material obligation under this Agreement which default is incapable of cure or which, being capable of cure, has not been cured within ten (10) days after receipt of notice of such default (or such additional cure period as the non-defaulting party may authorize in its sole discretion); or (ii) immediately upon: (x) the admission by the other party in writing of the inability to pay debts generally as they become due or the taking of any corporate action tantamount to such admission; (y) the other party ceasing to do business as a going concern; or (z) the other party making any assignment for the benefit of creditors; or (iii) upon 30 days prior written notice to the other party.

5.3 Effect of Termination.

Upon expiration or early termination of the Agreement, all licenses granted hereunder will terminate unless such licenses are expressly stated as surviving. The Syndication Partner will destroy and/or return all copies of Trader Marks in its possession and discontinue the use of such Trader Marks in any form. Except as otherwise provided herein, any termination or expiration of this Agreement shall be without prejudice to any other rights or remedies a party may be entitled to under this Agreement or at law or in equity and shall not affect any accrued rights or liabilities of either party nor the coming into or continuance in force of any provision of this Agreement which is expressly or by implication intended to come into or continue in force on or after such termination or expiration (including Articles 1, 3, 4, 6 and 8 and Sections 2.1.2, 2.1.3, 2.7 and 5.3).

ARTICLE 6 CONFIDENTIAL INFORMATION

6.1 Confidential Information Defined.

For purposes hereof, "Confidential Information" shall mean all information or material which is either: (i) marked "Confidential," or other similar marking; or (ii) from all the relevant circumstances should reasonably be assumed to be confidential and proprietary. Notwithstanding the foregoing, Confidential Information shall not include information which: (A) is or becomes generally known to the public by any means other than a breach of the obligations of a receiving party; (B) was previously known to the receiving party or rightly received by the receiving party from a third party; or (C) is independently developed by the receiving party without reference to information derived from the other party.

6.2 Confidentiality Covenants.

6.2.1 Each party agrees to hold the other's Confidential Information in strict confidence, both during the Term and until the later of the date that is three (3) years after expiration or early termination of this Agreement or the date on which any such Confidential Information becomes publicly known and made generally available through no action or inaction of such party. The parties agree not to make each other's Confidential Information available in any form to any third party or to use each other's Confidential Information for any purpose other than the implementation of, and as specified in, this Agreement. This Article 6 supplements and does not supersede any existing non-disclosure or confidentiality agreements between the parties.

6.2.2 In the event any Confidential Information is required to be disclosed by a receiving party under the terms of a valid and effective subpoena or order issued by a court of competent jurisdiction, or by a demand or information request from an executive or administrative agency or other governmental authority, the receiving party requested or required to disclose such Confidential Information shall, unless prohibited by the terms of a subpoena, order, or demand, promptly notify the disclosing party of the existence, terms and circumstances surrounding such demand or request, shall consult with the disclosing party on the advisability of taking legally available steps to resist or narrow such demand or request, and, if disclosure of such Confidential Information is required, shall exercise its reasonable best efforts to narrow the scope of disclosure and obtain an order or other reliable assurance that confidential treatment will be accorded to such Confidential Information. To the extent the receiving party is prohibited from notifying the disclosing party of a subpoena, order or

demand, by the terms of same, the receiving party shall exercise its reasonable efforts to narrow the scope of disclosure.

ARTICLE 7 TRADEMARK LICENSE

7.1 Trademarks.

- 7.1.1 Subject to the terms and conditions of this Agreement, Trader hereby grants to the Syndication Partner a non-exclusive, royalty-free, non-transferable and non-assignable license to use the Trader Marks (to the extent provided) on the Syndication Partner Site or otherwise as may be agreed to by Trader in writing. Subject to the terms and conditions of this Agreement, the Syndication Partner hereby grants to Trader a non-exclusive, royalty-free, non-transferable and non-assignable license to use the Syndication Partner Marks (to the extent provided) as may be agreed to by the Syndication Partner in writing.
- 7.1.2 Either party may terminate any rights it has granted herein with respect to its trademarks if, in the party's reasonable discretion, the other party's use of its trademarks tarnishes, blurs or dilutes the quality associated with its trademarks or its associated goodwill; alternatively, instead of terminating the license in total, a party may specify that certain uses of the trademarks are no longer permitted. A party will use the other party's trademarks exactly in the form provided and in conformance with any trademark usage policies provided to it. Except as may be expressly agreed by the parties, neither party will form any combination marks with the other party's trademarks.
- 7.1.3 Neither party will take any action inconsistent with the other party's ownership of any trademarks, and any benefits accruing from use of such trademarks will automatically vest in the party granting the rights herein.

ARTICLE 8 GENERAL

8.1 Costs.

Except as otherwise set forth in this Agreement, each party will bear its own costs and expenses related to this Agreement.

8.2 Notices.

Any demand, notice or other communication to be given in connection with this Agreement shall be given in writing and shall be validly given if delivered personally, sent by fax or mailed by prepaid registered mail to the recipient as follows:

to Trader at: 405 The West Mall - Suite 110, Etobicoke, Ontario M9C 5J1. Fax: (888) 697-5792

to the Syndication Partner at: [XXXXXX]

8.3 Entire Agreement.

This Agreement, including its Schedules, and any written non-disclosure agreement previously executed by the parties, constitutes the entire agreement between the parties with respect to the subject matter hereof. This Agreement supersedes any and all agreements, understandings and representations made between the parties prior to the date hereof. This Agreement shall not be amended except by written agreement between the parties.

8.4 Force Majeure.

Neither party shall be held to have breached this Agreement if they are unable to fulfill their obligations by virtue of an event beyond their reasonable control, including without limitation, an act of God, civil unrest, war, terrorism, or seizure or expropriation of assets (other than that caused by the actions or omissions of a party).

8.5 Assignment.

Neither party may assign this Agreement or any part hereof without the prior written consent of the other party which consent may not be unreasonably withheld.

8.6 No Third Party Beneficiaries.

Except as set out in Article 4, the parties hereby acknowledge and agree that there will be no third party beneficiaries to this Agreement.

8.7 Binding Effect.

The provisions of this Agreement are for the benefit of and are binding upon the parties and their respective successors and permitted assigns.

8.8 Governing Law.

This Agreement shall be construed and interpreted in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein. Each of the parties hereby irrevocably attorn to the jurisdiction of the courts of the Province of Ontario with respect to any matters arising out of this Agreement.

8.9 Choice of Language.

The parties acknowledge that they have required that this Agreement, as well as any documents, notices and legal proceedings executed, given or instituted pursuant hereto or relating directly or indirectly hereto be drawn up in English. *Les parties reconnaissent avoir exigé la rédaction en anglais de la présente convention, ainsi que tous les documents exécutés, avis donnés et procédures judiciaires intentées directement ou indirectement à la suite ou relativement à la présente convention.*

8.10 Publicity.

No press releases or general public announcements shall be made without the mutual consent of the parties.

8.11 Independent Contractors.

This Agreement does not create, and nothing contained in this Agreement will be deemed to establish a joint venture between the parties, or the relationship of employer-employee, partners, principal-agent or the like. Further, neither party will have the power to bind the other without the other's prior written consent, nor make any representation that it has any such power.

8.12 Counterparts.

This Agreement may be executed in two counterparts, each of which so executed shall be deemed to be an original and such counterparts when taken together shall constitute one and the same original agreement that shall be binding on the parties.

IN WITNESS WHEREOF, the parties have duly executed this Agreement as of the Effective Date.

XXX

TRADER CORPORATION

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Schedule A

Trader Dealership Syndication Agreement

Letter of Agreement for Content Syndication - Data Transfer (the "Agreement")

<Date>

Between

Trader Corporation ("Trader")
 110-405 West Mall
 Etobicoke, ON

<Dealer Name> ("Dealer")
 <Dealer Address>
 <City, Province>

Trader and Dealer enter into this Agreement to govern the delivery of the Dealer's automobile listings ("Dealer Data") as requested by Dealer, to be republished on Dealer's own website or on Trader-approved 3rd party websites or media. Licensing and other fees may apply for the delivery of data to designated (and Trader approved sites) 3rd party sites. Dealer will be solely responsible for payment of any fees charged by any third party in connection with the republication of the Dealer Data. Trader only agrees to use its best efforts to provide the requested Dealer Data, and takes no responsibility for providing related technical or other support. It is the Dealer's sole responsibility to

Terms

- This Agreement incorporates by reference the terms of the Trader Master Services Agreement (the "MSA"), which the Dealer entered into on [DATE] to govern their relationship with Trader.
- Within a reasonable time after receiving a request to do so from Dealer, Trader will provide an Internet-accessible means by which Dealer (or Dealer's agents or service providers) may download the Dealer Data in a computer readable format (the "Data Feed"). Trader grants Dealer a non-exclusive, revocable license to republish the Dealer Data on Dealer's own website.
- If Dealer wishes to republish the Dealer Data via any 3rd party website or other medium, Dealer must first obtain Trader's approval of each 3rd party website or medium. (3rd party websites and media approved by Trader shall be referred to in this Agreement as "Approved 3rd Party Media", and the parties who publish Approved 3rd Party Media shall be referred to as "Approved 3rd Parties") Dealer Data may not be republished anywhere other than on the Dealer's website or on Approved 3rd Party Media. Trader may charge a fee for republication of the Dealer Data on Approved 3rd Party Media, and Dealer agrees to pay all such fees to Trader in a timely fashion.
- Publication of the Dealer Data anywhere other than Dealer's website and Approved 3rd Party Media shall result in immediate termination of this Agreement, revocation of the license to use the Dealer Data, and may result in harm to Trader for which Dealer shall be liable. Dealer accepts all responsibility and liability for any misuse, resale, modification, or unauthorized republication of the Dealer Data by Approved 3rd Parties, or Dealer's agents or service providers.
- Trader will use its best efforts to update the Dealer Data available through the Data Feed daily. The Dealer Data shall consist of the Dealer's individual vehicle listing records ("Vehicle Listings"), which may contain the following elements: Record Identifier, Year, Make, Model, Trim, Price, Description, VIN (if available), and one or more photos in low resolution jpeg format. Dealer may not modify these photos in any way, including by removing any watermarks, metadata, or other identifiers.
- Dealer acknowledges that the Dealer Data in aggregate form, and the individual photos and textual or other elements of the Dealer Data taken individually are proprietary works owned by Trader, and protected under copyright and other intellectual property law. All Dealer Data is and shall remain the sole property of Trader.
- Vehicle Listings may only be republished on Dealer's website or Approved 3rd Party Media for the limited time required to facilitate the sale of that vehicle. Dealer must ensure that no Vehicle Listing remains available via the Dealer's website or Approved 3rd Party Media for longer than 60 days.

- This Agreement shall remain in force for an initial period of 1 year with automatic renewal for successive 1 year terms, unless thirty (30) days written notice of cancellation is given by either party, and unless abuse of originating data, or photos occurs, in which case Trader may terminate this Agreement immediately and without notice.
- Both parties acknowledge that their respective logos, trademarks and trade names remain their sole property and unauthorized use by Dealer of any Trader intellectual property shall result in the termination of this agreement.
- Dealer is solely responsible for all aspects (technical and otherwise) of republishing the Dealer Data. Trader shall merely provide the Data Feed, and shall not be responsible for providing any technical or other support to Dealer in connection with this Agreement.
- Trader shall have no liability to Dealer or any third party for claims related to Dealer's use of or inability to use the Dealer Data or the Data Feed, or for any claims relating to the accuracy, reliability, or integrity of the Dealer Data or any Vehicle Listing or other element of the Dealer Data. The Dealer Data and the Data Feed are provided on an "as-is" and "as available" basis, and Dealer's use of same shall be at Dealer's sole risk. The provisions of the MSA which exclude all warranties and limit Trader's Liability shall apply to this Agreement and the provision of the Dealer Data and the Data Feed.
- The nature and terms of this Agreement are confidential. Any disclosure or communications without the written consent of Trader will result in the termination of this agreement

Signatures below indicate the acceptance of all terms of this agreement.

<Trader Sales Director Signature>

Trader Corporation

<Dealer Principle Name & Signature>

<Dealership Name>

C

This is Exhibit "C" referred to in the Affidavit of Roger Dunbar
sworn March 24, 2016



Commissioner for Taking Affidavits (or as may be)

HANNAH ARTHURS

Goodmans^{LLP}

Barristers & Solicitors

Bay Adelaide Centre
333 Bay Street, Suite 3400
Toronto, Ontario M5H 2S7

Telephone: 416.979.2211
Facsimile: 416.979.1234
goodmans.ca

Direct Line: 416.597.4184
pruby@goodmans.ca

January 17, 2016

Our File No.: 15.3150

Via Email

Bereskin & Parr LLP
Scotia Plaza
40 King Street West, 40th Floor
Toronto, ON M5H 3Y2

Attention: Jonathan Colombo

Dear Mr. Colombo:

Re: Trader Corporation ("Trader") v. CarGurus, Inc. ("CarGurus")

We are writing in response to your letter dated January 14, 2016, regarding a schedule for the hearing of this matter. The timetable you have proposed is too slow for the reality of the situation, both in terms of the pending corporate matters we have disclosed to you and CarGurus' continuing copyright infringing conduct.

Contrary to the assertion in your letter, it did not take Trader "roughly five months" to prepare its case. How long it took is disclosed in Trader's affidavit material, i.e. under 2 months. We expect your client can have its material ready within a month at the latest, almost 2 months after Trader served its core affidavits, since CarGurus has far less work to do than Trader did to prepare its case.

We also disagree with your suggestion that the hearing of this application will take three days. At most, this application will take one day to argue. The matter is straightforward.

Trader proposes the following schedule:

Date	Event
By February 19, 2016	CarGurus to serve any responding affidavits or expert evidence, and advise what Rule 39.03 examinations it intends to conduct, if any
Week of February 29, 2016	Rule 39.03 examinations, if any
By March 14, 2016	Trader to serve any reply affidavits or expert evidence

Date	Event
By April 1, 2016	Cross-examinations to be completed
By April 22, 2016	Trader's factum to be served
By May 13, 2016	CarGurus' responding factum to be served
By May 27, 2016	Trader's reply factum, if any, to be served
As soon as the court is available after June 6, 2016	Hearing of the application

Please let us know if your client accepts this timetable.

Finally, you have requested copies of certain documents that you suggest are referred to in the affidavits served by Trader. These documents are already in your client's possession and/or are not referred to in the Trader affidavits. Nonetheless, we are prepared to respond to your requests.

You have requested a copy of the "current draft syndication agreement between Trader and a "Syndication Partner"" that you suggest is referred to in paragraph 16 of Allen Wales' Affidavit. As you are aware, and as Mr. Wales' Affidavit makes clear, the document that is referred to in paragraph 16 is the form of syndication agreement that was sent to CarGurus by Trader on July 7, 2015. Obviously, your client has a copy of this document. We can advise that our client has not changed that document since it was provided to your client.

You have also requested the "current draft Trader Dealership Syndication Agreement." This document was attached as Schedule A to the syndication agreement that was sent to CarGurus on July 7, 2015, so CarGurus already has it. It is not referred to in any of the Affidavits that were served by Trader, but we can advise that our client has not changed that document since it was provided to your client.

Our client reserves the right to alter either or both of these documents, without notice.

Finally, you have requested a copy of the "draft Trader Master Services Agreement between Trader and a dealer." This document is referred to in the Trader Dealership Syndication Agreement provided to CarGurus, but it is not referred to in any of the affidavits. Nonetheless, we are prepared to provide, and attach as you have requested, Trader's current draft agreement with dealers titled "Master Services Agreement."

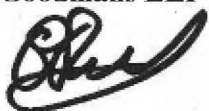
Please let us know if you would like to discuss any of the foregoing before Monday's Commercial List appointment.

Goodmans^{LLP}

Page 3

Yours truly,

Goodmans LLP



Peter Ruby

Attachment

cc: Jennifer McKenzie and Amrita Singh, Bereskin & Parr LLP
Hannah Arthurs, Goodmans LLP

6533915

MASTER SERVICES AGREEMENT

Dated (the "Effective Date")

BETWEEN:**TRADER CORPORATION ("Trader")**

A company with a place of business at 405 The West Mall, Suite 110, Etobicoke,
Ontario, Canada

- and -

("Dealer")

A company with a place of business at

(The contracting parties may be referred to collectively herein as the "**Parties**", and each individually as a "**Party**")

WHEREAS Dealer wishes to engage Trader to render certain services, and Trader wishes to accept this engagement;

WHEREAS Dealer and Trader wish this Agreement to govern the delivery of, use of, and payment for services ordered by Dealer at the time this Agreement is executed and those services ordered by Dealer at any time in the future;

NOW THEREFORE, FOR GOOD AND VALUABLE CONSIDERATION (including the mutual covenants contained herein), the receipt and sufficiency of which is irrevocably acknowledged, the parties agree as follows:

1. THIS AGREEMENT, and ELECTRONIC SIGNATURES

1.1 This Agreement (including any additional terms incorporated by reference, or otherwise brought to the Dealer's attention) (the "**Agreement**") governs the relationship between Trader and the Dealer in connection with Trader's provision of any of the following services:

- a) easyLead Services
- b) Dealer Online Lot Services
- c) dealerSmartSolutions Services
- d) velociT Services

1.2 Each of the service categories listed above paragraph may be referred to herein individually as a “**Service**”, or collectively as the “**Services**”.

1.3 In order to provide the Services (or merely in connection with the Services), Trader may provide the Dealer with access to certain computer software, including (but not limited to) standalone computer programs, software accessible through computer networks and/or servers, or websites and web pages (collectively, the “**Software**”).

1.4 Dealer may order Services at the same time Dealer signs this Agreement (or any previous version of this Agreement), or at any time thereafter. All aspects of the relationship between Trader and Dealer with respect to all such Services shall be governed by the terms of this Agreement.

1.5 The Dealer’s electronic signature submitted in connection with a document, contract, or agreement shall express the Dealer’s consent and agreement with the same legally binding effect as it had marked its signature or initials on a paper copy of that document.

1.6 Trader’s provision of the Services shall express its consent and agreement with the terms and conditions of this Agreement (which Trader has caused to be prepared) and all of its obligations hereunder or pursuant to any related document, contract or agreement.

1.7 This Agreement incorporates by reference the terms of the CONSENT TO ELECTRONIC RECEIPT OF ELECTRONIC CONSUMER DISCLOSURES agreement, attached hereto at Schedule A.

1.8 In addition to the general terms set out in the body of this Agreement, additional terms may apply to particular services or interactions with Trader. The text of such additional terms (or a hyperlink to such additional terms) may be displayed or otherwise brought to the Dealer’s attention when the Dealer (or any person accessing the Services on the Dealer’s behalf) orders or uses the Services. Dealer agrees to read, understand, and be bound by any such additional terms, which terms, for greater certainty, shall be deemed to be part of this Agreement.

1.9 Additional terms applicable to specific Trader Services may be set out on Order Sheets (as hereinafter defined) for those services. Dealer agrees to read, understand, and be bound by any such additional terms, which terms, for greater certainty, shall be deemed to be part of this Agreement.

1.10 The Dealer understands and acknowledges that the Software or Services may incorporate or require the use of third party software or services (the “Third Party Services”). Third party software or services may be subject to additional terms or fees specific to such software or services, including third party license terms. The Dealer is solely responsible for any such fees, and agrees to comply with all such terms, including any “click through” or “shrink wrap” license terms presented to the Dealer in the course of the Dealer’s use of the Software or Services, or otherwise brought to the Dealer’s attention. Dealer understands and agrees such services are provided by and are the sole

responsibility of their respective third party service provider, and that Trader shall not be held liable for the content of, availability of, or accuracy of any Third Party Services. In the event that Dealer is dissatisfied with or incurs damage or loss due to its use of, reliance upon, or inability to use any Third Party Services, Trader may not be held liable for any such damage or loss.

1.11 The Dealer may not assign, or sub-license its rights under this Agreement, grant a security interest in or over the Dealer's rights to use the Software or Services, or otherwise transfer or encumber any part of the Dealer's rights to use the Software or Services.

1.12 The Parties agree that this engagement is nonexclusive, and that nothing in this Agreement shall restrict Trader's right to render the same or similar services to any other person or legal entity.

1.13 Trader may, at its sole discretion, amend any terms, conditions or other provisions of this Agreement, and may make changes to the Applicable Fees or the Services offered at any time. Any such amendment shall be effective (and the Dealer shall be bound to the amended terms and/or fees) immediately after Trader notifies Dealer of such amendment. In the event that Dealer does not wish to be bound by the amended terms and/or fees, it may choose to give notice that it wishes to terminate this Agreement as set out in Section 8, below.

2. THE SERVICES – ORDER SHEETS and APPLICABLE FEES

2.1 The Dealer may from time to time request that Trader provide Services to Dealer. Each time Dealer orders services from Trader, Trader shall prepare a document (the "**Order Sheet**") detailing the services requested by Dealer (the "**Requested Services**") as well as the fees payable by Dealer for the Requested Services (the "**Applicable Fees**").

2.2 Trader shall then provide Dealer with an electronic copy of the Order Sheet. Dealer will be given an opportunity to review the Order Sheet via an online interface and may indicate its approval of the Order Sheet by signing the Order Sheet with an electronic signature. By approving the Order Sheet in this way, Dealer indicates that it wishes Trader to provide the services listed on the Order Sheet, and that Dealer agrees to pay Trader the Applicable Fees listed on the Order Sheet (in addition to the Applicable Fees listed on previous Order Sheets), and any applicable taxes.

2.3 Applicable Fees may be one-time-only fees, or may be recurring charges, as set out on each Order Sheet. Dealer will be invoiced for one-time-only charges immediately after approving the applicable Order Sheet, and invoiced for any recurring charges on a weekly or monthly basis (as set out on each Order Sheet).

2.4 Trader shall invoice the Dealer on a recurring basis for the Applicable Fees, plus any applicable taxes (the "**Invoiced Amount**"). The Invoiced Amount shall be due thirty (30) days after the date of each invoice (the "**Due Date**"). Invoices shall be sent to the email address provided by Dealer. It is Dealer's responsibility to ensure that the email address provided remains current, active, and capable of receiving email. Invoices that

are not received by Dealer due to the configuration or misconfiguration of Dealer's email software or servers nonetheless become due on the applicable Due Date.

2.5 The Dealer shall pay Trader the Invoiced Amount on or before the applicable Due Date. An interest rate of 1.5% per month (18% per year) shall apply to any Invoiced Amounts remaining unpaid by the Dealer, commencing on the Due Date.

2.6 The Dealer acknowledges that the provision of the Requested Services is strictly contingent upon Trader's approval of the Dealer's creditworthiness. Trader may terminate this Agreement immediately, at any time, and at its sole discretion if it loses confidence in the Dealer's creditworthiness. The Dealer hereby authorizes Trader to (a) conduct any and all customary inquiries regarding the Dealer's solvency and credit; (b) to collect and store information relating to the Dealer's solvency and credit; and (c) disclose such information to third parties as required.

3. TRADER'S PROPRIETARY RIGHTS

3.1 The Dealer hereby acknowledges and agrees that Trader and the Trader Associates (as hereinafter defined), or any of their respective licensors, own and shall retain all legal right, title and interest in and to the Software and Services, including any intellectual property rights that subsist in the Software or Services (of whatever nature, whether registered or not, and wherever in the world those rights may exist). Without limiting the foregoing, the Dealer acknowledges that Trader exclusively owns the intellectual property rights related to any written content, graphics, images, and/or photographs taken, created, written, or developed by Trader, Trader Associates, or their employees, contractors, or representatives, pursuant to this Agreement or otherwise. The Dealer shall not reproduce any of these proprietary materials without Trader's express prior written consent.

4. USE OF SERVICES BY DEALER

4.1 The Dealer understands and acknowledges that it uses the Services at its own risk.

4.2 The Dealer agrees:

- (a) to remain at all times in full compliance with this Agreement;
- (b) to provide only accurate, current and truthful information to Trader, and to correct or update any previously provided information as soon as reasonably possible if and when that information becomes out of date;
- (c) not to access (or attempt to access) any parts of the Software or Services by any means other than through the interface that is provided by Trader;
- (d) not to access (or attempt to access) any portions of the Software or Services or the content included therein through any automated means (including the use of scripts or web crawlers);

- (e) not to engage in any activity that interferes with or disrupts the Software or Services (or the servers and networks associated with the Software or Services);
- (f) not to copy, reproduce, duplicate, modify, create derivative works from the Software or Services;
- (g) not to decompile, reverse engineer, or otherwise attempt to derive source code from the Software or attempt to duplicate the functionality of the Software or Services;
- (h) not to sell, trade, sublicense, or resell the Software or Services to any other party, in whole or in part, for any purpose;
- (i) not to remove, obscure, or alter any proprietary rights notices (including copyright and trademark notices) that may be affixed to, or displayed or contained within the Services;
- (j) that it shall be liable to Trader or any applicable Trader Associate for any breach of any of its obligations under this Agreement and for any activity that occurred under its account, including any unauthorized activities. As such, the Dealer recognizes the importance of maintaining the confidentiality of passwords associated with any account the Dealer uses to access the Services. The Dealer acknowledges that the security of its user account is its sole responsibility, that it shall select strong passwords, that it shall only provide the passwords to its employees or other representatives with a need to know, and that it shall change its passwords promptly upon becoming aware of the possibility that one of its accounts may have been compromised;
- (k) to maintain the confidentiality of the information that the Dealer uses, is provided to the Dealer, or that the Dealer obtains as a result of its use of the Services;
- (l) to comply with all applicable laws, legislation, rules, regulations, governmental requirements and industry standards with respect to the Dealer's use of the Software or Services and the performance by the Dealer of its obligations hereunder, including, but not limited to, any laws regarding the export of data or software to and from Canada (or any other relevant country), and any applicable federal, provincial, state and local laws, rules, regulations, and ordinances governing the privacy and security of customer information that apply to the Dealer and to protect and maintain the privacy of such information accordingly.

4.3 The Dealer agrees not to permit or authorize any other person or legal entity to do anything that the Dealer is prohibited under this Agreement from doing directly.

4.4 The Dealer acknowledges that as part of the provision of certain Services it may receive use of, and access to, certain toll-free and local tracking telephone numbers, as

well as other services relating to such numbers (collectively, the “**Telephone Services**”). The Dealer acknowledges and understands that when a person (the “**Caller**”) calls a Telephone Service, the Caller will be automatically advised that each call may be subject to recording and monitoring prior to the connection of the telephone call to the Dealer through the Telephone Service, and that such recording and monitoring by Trader may or may not take place.

5. CONFIDENTIALITY

5.1 In the course of the Dealer's use of the Software and Services, the Dealer may be provided with certain confidential information. This confidential information includes (but is not limited to) market information and analysis, forecasts, trend analysis information, vehicle pricing trend analysis, vehicle sales trend analysis, and other information and analysis derived from or provided through the Software and Services. This information, and the specifics of this Agreement (including terms, conditions, fees, and pricing), shall be referred to herein collectively as “Confidential Information”.

5.2 The Dealer agrees to take any and all steps and precautions that may be reasonably required to maintain the confidentiality of the Confidential Information. The Dealer agrees that the Confidential Information shall be disclosed only to those of its employees with a genuine need to know, and that it will first ensure that those employees are bound by confidentiality agreements containing terms equivalent to those contained herein.

5.3 The Dealer's confidentiality obligations shall survive termination of this Agreement. With respect to each particular item of confidential information, the Dealer's confidentiality obligations shall survive until that item of confidential information becomes publicly known or publicly available other than through disclosure by the Dealer or breach of any obligation hereunder.

5.4 The Dealer acknowledges that its breach or threatened breach of its confidentiality obligations hereunder will cause Trader harm that cannot be quantified and that money cannot fully redress and agrees that Trader shall be entitled (in addition to any other available remedies) to seek and obtain injunctive relief to remedy such actual or threatened breach without the need to prove irreparable harm or post security.

6. DEALER INFORMATION AND DEALER CONTENT

6.1 In the course of the Dealer's use of the Software and Services, the Dealer may be required to provide (or Trader or its representatives may collect) certain information about itself and its inventory (the “**Dealer Information**”). The Dealer consents to Trader's collection, storage, distribution, use and making available of such Dealer Information as Trader may reasonably require in order to carry on its business and/or to provide the Software and Services.

6.2 The Dealer shall ensure that the Dealer Information it provides to Trader remains current and accurate, and shall update or correct any out-of-date or inaccurate Dealer Information as soon as reasonably possible.

6.3 In the course of the Dealer's use of the Software and Services, and particularly in the course of preparing the Dealer advertisements or listings which may be published through the Software or Services, the Dealer may upload certain content through the Software or Services (the "**Dealer Content**"). The Dealer Content may include, for example: text, images, graphics, sounds, music, audio clips, video clips, computer code or software, or collections of data.

6.4 The Dealer understands that it is solely responsible for all Dealer Content, and that Trader and the Trader Associates shall have no responsibility or liability to the Dealer or to any third party in connection with the Dealer Content or its publication by Trader. The Dealer represents and warrants that it owns or has licensed all intellectual property rights that may be required to allow the Dealer Content to be published through the Software and Services or otherwise made available in connection with the Software or Services, or in connection with any Dealer advertisement or listing, and that publication of the Dealer Content by Trader in any form, format, or jurisdiction will not infringe on the intellectual property rights of any third party. The Dealer represents and warrants that all Dealer Content is accurate, truthful, and free of offensive, slanderous and libelous content or remarks.

6.5 Trader reserves the right (but shall have no obligation) to pre-screen, review, flag, filter, modify, refuse or remove any or all Dealer Content at its sole discretion.

6.6 By submitting, posting or displaying Dealer Content in connection with any of the Services, the Dealer hereby grants to Trader and all Trader Associates a perpetual, irrevocable, worldwide, royalty-free, sublicenseable, and non-exclusive license to use, reproduce, adapt, modify, translate, publish, publicly perform, make available, publicly display and distribute any Dealer Content, as Trader may reasonably require in order to carry on its business and/or provide the Software and Services. This license is for the sole purpose of enabling Trader and all Trader Associates to display, distribute and promote the Software or Services, and to display, publish, analyze and archive Dealer listings and advertisements placed pursuant to this Agreement. The Dealer agrees that this license includes a right for Trader and the Trader Associates to make the Dealer Content available to their licensors. The Dealer understands that Trader or any Trader Associate, in performing the required technical steps to provide the Software or Services to the Dealer, may: (a) transmit or distribute the Dealer Content over various public networks and in various media; and (b) make such changes to the Dealer Content as are necessary to conform and adapt the Dealer Content to the technical requirements of connecting networks, devices, services or media. The Dealer hereby acknowledges and agrees that this license shall permit Trader to take all of the foregoing actions. The Dealer confirms, represents and warrants to Trader that it has all of the rights, power and authority necessary to grant this license.

6.7 Dealer agrees that Trader may aggregate and anonymize the Dealer Content and/or the Dealer Information and analyze, collect, store, distribute and use that information for any reasonable business purpose.

6.8 Dealer acknowledges and agrees that in the course of providing the Services, Dealer Information and Dealer Content may be transmitted to or through, and may be

stored on, computer systems and networks located outside of Canada. Dealer understands that Dealer information and Dealer Content may therefore be subject to the laws applicable in jurisdictions other than Canada.

7. DEALER INDEMNITY AND NOTIFICATION

7.1 The Dealer hereby agrees to indemnify, defend and hold harmless Trader, the Trader Associates, and each of their respective third party service providers, officers, shareholders, directors, employees and agents (collectively, the “**Indemnified Parties**”), from and against any and all third party claims, demands, proceedings, suits and actions, including any related liabilities, obligations, losses, damages, fines, judgments, settlements, charges, expenses (including attorneys’ and accountants’ fees and disbursements) and costs (“**Claims**”), incurred by, borne by or asserted against any of the Indemnified Parties to the extent such Claims relate to, arise out of or result from:

- (a) any intentional or wilful conduct or negligence of any employees, agents or subcontractors of the Dealer;
- (b) a breach of any of the Dealer’s representations, warrants, covenants or other obligations contained in this agreement;
- (c) inaccuracy of any information provided by the Dealer in connection with this Agreement;
- (d) the Dealer’s use of or inability to use the Software, Services or Telephone Services; or
- (e) any Dealer Content, including any claims of infringement of any third party intellectual property right.

7.2 The Dealer certifies that it will review all content prior to submission through the Software or Services to ensure that said content is fully and completely accurate and contains no errors, mistakes, omissions, inconsistencies, or libelous or slanderous remarks. The Dealer understands and acknowledges that Trader relies upon this assurance in providing the Dealer with access to the Requested Services.

7.3 The Dealer shall notify Trader immediately upon becoming aware of any claim or potential claim against the Dealer, Trader, or any Trader Associate arising in connection with the Dealer's use of the Software or Services.

7.4 The Dealer shall notify Trader within seven (7) days of any breach of any provision of this Agreement.

8. TERM, TERMINATION, and CANCELLATION OF SERVICES

8.1 This Agreement shall be effective as of the Effective Date and shall continue in force and effect until terminated by one of the Parties.

8.2 Trader may terminate this Agreement for any reason by providing Dealer with thirty (30) days written notice of termination.

8.3 Dealer may request termination of this Agreement by providing written notice of that request to Trader (the "**Termination Request**"). Upon receipt of this Termination Request, Trader shall issue to the Dealer a request for confirmation of the Dealer's desire to terminate the Agreement (the "**Termination Confirmation Request**"). In order for termination to be effective, Dealer must approve this Termination Confirmation Request within ten (10) days. If such approval is provided, this Agreement shall terminate thirty (30) days after Trader receives Dealer's approval of the Termination Confirmation Request.

8.4 Trader may immediately terminate this Agreement and immediately cease providing the Software or Services if any amount owed to Trader by the Dealer pursuant to this Agreement or any other contract between the Dealer and Trader is more than thirty (30) days overdue, or if Trader loses confidence in the Dealer's creditworthiness, or if Trader ceases to provide the Software or Services.

8.5 Dealer may request cancellation of all or some of the services requested pursuant to this Agreement by providing written notice of that request to Trader (the "**Cancellation Request**"). Trader may reject this Cancellation Request at its sole discretion, or Trader may issue to the Dealer a request for confirmation of the Dealer's desire to cancel services (the "**Cancellation Confirmation Request**"). Dealer must approve this Cancellation Confirmation Request within ten (10) days. If such approval is provided, the services listed in the Cancellation Confirmation Request shall cease to be billed and provided thirty (30) days after Trader receives Dealer's approval of the Cancellation Confirmation Request.

8.6 The Dealer shall be obligated and hereby covenants to pay all Fees owing up to and including the date of termination of this Agreement.

9. EXCLUSION OF WARRANTIES AND LIMITATION OF LIABILITY

NOTHING IN THIS AGREEMENT SHALL EXCLUDE OR LIMIT ANY WARRANTY OR LIABILITY FOR LOSSES WHICH MAY NOT BE LAWFULLY EXCLUDED OR LIMITED BY APPLICABLE LAW. ONLY EXCLUSIONS AND LIMITATIONS THAT ARE ALLOWABLE UNDER APPLICABLE LAW WILL APPLY. THE LIABILITY OF TRADER AND THE TRADER ASSOCIATES SHALL BE LIMITED TO THE MAXIMUM EXTENT PERMITTED BY LAW.

THE DEALER EXPRESSLY UNDERSTANDS AND AGREES THAT ITS USE OF THE SOFTWARE OR SERVICES IS AT THE DEALER'S SOLE RISK AND THAT THE SOFTWARE OR SERVICES ARE PROVIDED "AS IS" AND "AS AVAILABLE." IN PARTICULAR, TRADER AND ITS AFFILIATES, AND EACH OF THEIR LICENSORS, DO NOT REPRESENT OR WARRANT TO THE DEALER THAT: (A) THE DEALER'S USE OF THE SOFTWARE OR SERVICES WILL MEET THE DEALER'S REQUIREMENTS; (B) THE DEALER'S USE OF THE SERVICES WILL BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR-FREE; (C) ANY INFORMATION OBTAINED BY THE DEALER AS A RESULT OF THE DEALER'S USE OF THE SOFTWARE OR SERVICES WILL BE ACCURATE, UP-TO-DATE, OR RELIABLE; OR (D) DEFECTS IN THE OPERATION OR FUNCTIONALITY OF

ANY SOFTWARE PROVIDED TO THE DEALER AS PART OF THE SOFTWARE OR SERVICES WILL BE CORRECTED.

ANY MATERIAL DOWNLOADED OR OTHERWISE OBTAINED THROUGH THE USE OF THE SOFTWARE OR SERVICES IS DONE AT THE DEALER'S OWN DISCRETION AND RISK. THE DEALER AGREES THAT IT WILL BE SOLELY RESPONSIBLE FOR ANY RESULTING DAMAGE TO ITS COMPUTER (OR OTHER DEVICE), AND FOR ANY RESULTING LOSS OF DATA.

NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY THE DEALER FROM TRADER, ANY OF ITS AFFILIATES, OR THROUGH OR FROM THE SOFTWARE OR SERVICES SHALL CREATE ANY WARRANTY NOT EXPRESSLY STATED IN THIS AGREEMENT.

TRADER AND ITS AFFILIATES FURTHER EXPRESSLY DISCLAIM ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO ANY AND ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT.

THE DEALER EXPRESSLY UNDERSTANDS AND AGREES THAT TRADER WOULD NOT BE ABLE TO ECONOMICALLY PROVIDE THE ADVERTISING, SOFTWARE OR SERVICES WITHOUT THE BENEFIT OF A STRICT LIMITATION OF LIABILITY CLAUSE AND HAS SET ITS FEES AND OTHER PRICES ACCORDINGLY. CONSEQUENTLY, SUBJECT TO OVERALL PROVISIONS ABOVE, THE DEALER FURTHER AGREES THAT NEITHER TRADER, NOR ANY TRADER ASSOCIATE, NOR THEIR RESPECTIVE LICENSORS SHALL BE LIABLE TO THE DEALER FOR: (A) ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES THAT MAY BE INCURRED BY THE DEALER, HOWEVER CAUSED AND UNDER ANY THEORY OF LIABILITY. THIS SHALL INCLUDE, BUT NOT BE LIMITED TO, ANY LOSS OF PROFIT (DIRECT OR INDIRECT), ANY LOSS OF GOODWILL OR BUSINESS REPUTATION, ANY LOSS OF DATA, ANY COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, OR ANY OTHER INTANGIBLE LOSS; (B) ANY LOSS OR DAMAGE THAT MAY BE INCURRED BY THE DEALER, INCLUDING BUT NOT LIMITED TO LOSS OR DAMAGE AS A RESULT OF: (I) ANY RELIANCE PLACED BY ANY THIRD PARTY ON THE COMPLETENESS, ACCURACY OR EXISTENCE OF ANY ADVERTISING ON BEHALF OF THE DEALER WHICH IS GENERATED BY THE SOFTWARE OR SERVICES; (II) ANY CHANGES THAT TRADER MAY MAKE TO THE SOFTWARE OR SERVICES, OR FOR ANY PERMANENT OR TEMPORARY CESSATION IN THE PROVISION OF THE SOFTWARE OR SERVICES (OR ANY FEATURES WITHIN THE SOFTWARE OR SERVICES); AND (III) THE DELETION OF, CORRUPTION OF, OR FAILURE TO STORE, ANY CONTENT AND OTHER COMMUNICATIONS DATA MAINTAINED OR TRANSMITTED BY OR THROUGH THE SOFTWARE OR SERVICES.

UNDER NO CIRCUMSTANCES SHALL TRADER BE HELD LIABLE FOR ANY DAMAGE, HARM, OR LOSS INCURRED DUE TO DEALER'S USE OF, RELIANCE UPON, OR INABILITY TO USE ANY THIRD PARTY SERVICES OR ANY ASPECT OF THE SOFTWARE OR SERVICES PROVIDED BY THIRD PARTY SERVICE PROVIDERS.

IN THE EVENT THAT THESE LIMITATION OF LIABILITY PROVISIONS DO NOT EFFECTIVELY OUST TRADER'S LIABILITY IN FULL, THE DEALER UNDERSTANDS AND AGREES THAT UNDER NO CIRCUMSTANCES WILL TRADER'S AGGREGATE LIABILITY, HOWEVER ARISING, EXCEED THE SUM OF ALL FEES PAID BY THE DEALER TO TRADER DURING THE SIX-MONTH PERIOD IMMEDIATELY PRECEDING THE DATE THAT THE RELEVANT CLAIM AROSE.

THESE LIMITATIONS ON LIABILITY SHALL APPLY WHETHER OR NOT TRADER AND ITS AFFILIATES HAVE BEEN ADVISED OF OR SHOULD HAVE BEEN AWARE OF THE POSSIBILITY OF ANY PARTICULAR LOSS OR DAMAGE.

10. GENERAL

10.1 For the purposes of this Agreement, "**Trader Associate**" means any entity legally affiliated with Trader, as well as any contractor, vendor, partner or other third party used, contracted or employed by Trader in connection with the provision of the Services.

10.2 This Agreement will be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns. The Dealer may not assign or otherwise transfer its rights or obligations under this Agreement without the prior written consent of Trader. Trader shall have the right to assign its rights and obligations under this Agreement to any other party at Trader's sole discretion.

10.3 All monetary amounts referred to in this Agreement are given in Canadian dollars.

10.4 Nothing in this Agreement shall be considered to constitute a joint venture, partnership, or trust relationship between the parties. The only relationship that is intended to be created by this Agreement is that of independent contracting parties.

10.5 Neither party shall be liable for delay or failure in performance resulting from acts beyond the control of that party, including, but not limited to, "acts of god", acts of war, pandemic, riot, fire, flood, or other disaster, strike, lockout, communication line or power failures. A party shall be excused for delay or failure in performance only during the reasonable duration of the circumstances preventing performance.

10.6 This Agreement can be modified only by written agreement of both parties. Forbearance or indulgence by either party in any regard shall not constitute a waiver of

any term or condition to be performed, and either party may invoke any remedy available under the Agreement or by law despite any forbearance or indulgence.

10.7 This Agreement may be executed in one or more counterparts, which, taken together, shall constitute one and the same agreement.

10.8 The subject headings of this Agreement are included for purposes of convenience only and shall not affect the construction or interpretation of any of its provisions.

10.9 If any provision of this Agreement is declared by a court of competent jurisdiction to be invalid, illegal or unenforceable, the remainder of this Agreement shall remain valid and in full force and effect. In the event of such partial invalidity, the Parties shall seek in good faith to agree on replacing any such legally invalid provision with a provision which, in effect, will most nearly and fairly approach the effect of the invalid provision.

10.10 This Agreement contains the complete and exclusive statement of the agreement between the parties and supersedes all prior and contemporaneous agreements, understandings, proposals, negotiations, representations or warranties of any kind, whether oral or written. No oral or written representation that is not expressly contained in the Agreement is binding on either party.

10.11 The parties have requested that this Agreement be drawn in the English language; *Les signataires confirment leur volonté que la présente convention soit rédigés en anglais.*

10.12 All notices and other communications from Dealer to Trader which must or may be given pursuant to this Agreement will be deemed to have been sufficiently given when delivered by personal service, recognized overnight courier service, or email to the addressee party at the following addresses:

Trader Corporation
405 The West Mall, Suite 110
Etobicoke, ON, Canada
M9C 5J5

email: TraderSales@trader.ca
Attention: Trader Sales

or to such other address or person as the addressee party may designate in writing from time to time. Any notification so delivered will be deemed to be effective on the earlier of (a) the date of actual receipt; or (b) if sent by overnight courier service, on the second day following the date presented to the courier service for delivery to the other party; or (c) if sent by email, on the sending date, subject to confirmation of receipt.

10.13 All notices and other communications from Trader to Dealer which must or may be given pursuant to this Agreement will be deemed to have been sufficiently given when sent by email to Dealer at the email address provided by Dealer. Any notification so

delivered will be deemed to be effective on the sending date. It is Dealer's responsibility to ensure that the email address is kept current, and is configured properly so as to be available, accessible, and capable of receiving email.

10.14 This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario, and the laws of Canada applicable therein, without regard to any conflicts of laws principles.

10.15 In the event of any dispute between the parties arising hereunder, each party will use commercially reasonable efforts to amicably resolve such dispute (through mutual discussion, mutually agreeable mediation or such other dispute resolution process as may be mutually agreed upon) prior to seeking redress through formal legal action. In the event that such efforts are unsuccessful, any disputes arising in connection with this Agreement shall be heard at the Courts in Toronto, Ontario, Canada.

The Dealer has caused this Agreement to be executed by a duly authorized representative, effective as of the Effective Date.

DEALER:

Signature

Date

I have authority to bind the Corporation

SCHEDULE A

CONSENT TO ELECTRONIC RECEIPT OF ELECTRONIC CONSUMER DISCLOSURES Agreement

CONSUMER DISCLOSURE

From time to time, Trader Corporation (we, us or Company) may be required by law to provide to you certain written notices or disclosures. Described below are the terms and conditions for providing to you such notices and disclosures electronically through the DocuSign, Inc. (DocuSign) electronic signing system. Please read the information below carefully and thoroughly, and if you can access this information electronically to your satisfaction and agree to these terms and conditions, please confirm your agreement by clicking the 'I agree' button at the bottom of this document.

Getting paper copies

At any time, you may request from us a paper copy of any record provided or made available electronically to you by us. You will have the ability to download and print documents we send to you through the DocuSign system during and immediately after signing session and, if you elect to create a DocuSign signer account, you may access them for a limited period of time (usually 30 days) after such documents are first sent to you. After such time, if you wish for us to send you paper copies of any such documents from our office to you, you will be charged a \$0.00 per-page fee. You may request delivery of such paper copies from us by following the procedure described below.

Withdrawing your consent

If you decide to receive notices and disclosures from us electronically, you may at any time change your mind and tell us that thereafter you want to receive required notices and disclosures only in paper format. How you must inform us of your decision to receive future notices and disclosure in paper format and withdraw your consent to receive notices and disclosures electronically is described below.

Consequences of changing your mind

If you elect to receive required notices and disclosures only in paper format, it will slow the speed at which we can complete certain steps in transactions with you and delivering services to you because we will need first to send the required notices or disclosures to you in paper format, and then wait until we receive back from you your acknowledgment of your receipt of such paper notices or disclosures. To indicate to us that you are changing your mind, you must withdraw your consent using the DocuSign 'Withdraw Consent' form on the signing page of a DocuSign envelope instead of signing it. This will indicate to us that you have withdrawn your consent to receive required notices and disclosures electronically from us and you will no longer be able to use the DocuSign system to receive required notices and consents electronically from us or to sign electronically documents from us.

All notices and disclosures will be sent to you electronically

Unless you tell us otherwise in accordance with the procedures described herein, we will provide electronically to you through the DocuSign system all required notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you during the course of our relationship with you. To reduce the chance of you inadvertently not receiving any notice or disclosure, we prefer to provide all of the required notices and disclosures to you by the same method and to the same address that you have given us. Thus, you can receive all the disclosures and notices electronically or in paper format through the paper mail delivery system. If you do not agree with this process, please let us know as described below. Please also see the paragraph immediately above that describes the consequences of your electing not to receive delivery of the notices and disclosures electronically from us.

How to contact Trader Corporation:

You may contact us to let us know of your changes as to how we may contact you electronically, to request paper copies of certain information from us, and to withdraw your prior consent to receive notices and disclosures electronically as follows:

To contact us by email send messages to: TraderSales@trader.ca

To advise Trader Corporation of your new e-mail address

To let us know of a change in your e-mail address where we should send notices and disclosures electronically to you, you must send an email message to us at TraderSales@trader.ca and in the body of such request you must state: your previous e-mail address, your new e-mail address. We do not require any other information from you to change your email address.

In addition, you must notify DocuSign, Inc. to arrange for your new email address to be reflected in your DocuSign account by following the process for changing e-mail in the DocuSign system.

To request paper copies from Trader Corporation

To request delivery from us of paper copies of the notices and disclosures previously provided by us to you electronically, you must send us an e-mail to TraderSales@trader.ca and in the body of such request you must state your e-mail address, full name, US Postal address, and telephone number. We will bill you for any fees at that time, if any.

To withdraw your consent with Trader Corporation

To inform us that you no longer want to receive future notices and disclosures in electronic format you may:

- i. decline to sign a document from within your DocuSign session, and on the subsequent page, select the check-box indicating you wish to withdraw your consent, or you may;
- ii. send us an e-mail to TraderSales@trader.ca and in the body of such request you must state your e-mail, full name, US Postal Address, and telephone number. We do not need any other information from you to withdraw consent.. The consequences of your withdrawing consent for online documents will be that transactions may take a longer time to process.

Required hardware and software

Operating Systems:	Windows® 2000, Windows® XP, Windows Vista®; Mac OS® X
Browsers:	Final release versions of Internet Explorer® 6.0 or above (Windows only); Mozilla Firefox 2.0 or above (Windows and Mac); Safari™ 3.0 or above (Mac only)
PDF Reader:	Acrobat® or similar software may be required to view and print PDF files
Screen Resolution:	800 x 600 minimum
Enabled Security Settings:	Allow per session cookies

** These minimum requirements are subject to change. If these requirements change, you will be asked to re-accept the disclosure. Pre-release (e.g. beta) versions of operating systems and browsers are not supported.

Acknowledging your access and consent to receive materials electronically

To confirm to us that you can access this information electronically, which will be similar to other electronic notices and disclosures that we will provide to you, please verify that you were able to read this electronic disclosure and that you also were able to print on paper or electronically save this page for your future reference and access or that you were able to e-mail this disclosure and consent to an address where you will be able to print on paper or save it for your future reference and access. Further, if you consent to receiving notices and disclosures exclusively in electronic format on the terms and conditions described above, please let us know by clicking the 'I agree' button below.

By checking the 'I agree' box, I confirm that:

- I can access and read this Electronic CONSENT TO ELECTRONIC RECEIPT OF ELECTRONIC CONSUMER DISCLOSURES document;
- I can print on paper the disclosure or save or send the disclosure to a place where I can print it, for future reference and access;
- Until or unless I notify Trader Corporation as described above, I consent to receive from exclusively through electronic means all notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to me by Trader Corporation during the course of my relationship with you.

TRADER CORPORATION - and - CARGURUS, INC.
Applicant Respondent

Court File No. CV-15-11232-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at Toronto

REPLY AFFIDAVIT OF ROGER DUNBAR

Goodmans LLP
Barristers & Solicitors
Bay Adelaide Centre
333 Bay Street, Suite 3400
Toronto, ON M5H 2S7

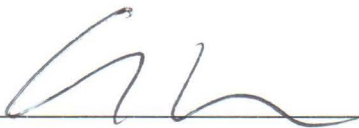
Peter Ruby LSUC#: 38439P
Hannah Arthurs LSUC#: 553370

Tel: 416.979.2211
Fax: 416.979.1234

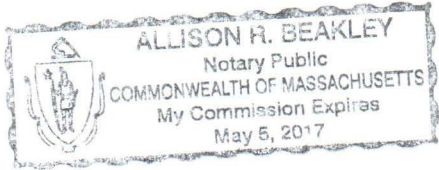
Lawyers for the Applicant

8

This is Exhibit "8" referred to in the Affidavit of Martha Blue sworn before me this 14th day of April, 2016.



Notary Public



Court File No. CV-15-11232-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

BETWEEN:

TRADER CORPORATION

Applicant

- and -

CARGURUS, INC.

Respondent

APPLICATION UNDER SECTION 34(4) OF THE COPYRIGHT
ACT, R.S.C. 1985, c. C-42 AS AMENDED

REPLY AFFIDAVIT OF D'ARCY WOODBURN-DAVIS

I, D'Arcy Woodburn-Davis, of the City of Burlington, in the Province of Ontario, MAKE OATH
AND SAY:

1. I previously swore an affidavit dated December 22, 2015 in this proceeding (my "First Affidavit"). This affidavit is supplementary to and should be read in conjunction with my First Affidavit and uses the same capitalized terminology except where I use new defined terms below.
2. I noted in paragraph 19 of my First Affidavit that I was continuing to search for additional matching pairs of images. This affidavit sets out the results of that exercise, as well as my efforts

to determine whether the 144,974 matching paired images described in my First Affidavit were still available on the CarGurus website as of February 4, 2016.

3. I have personal knowledge of the matters contained in this affidavit, except where I have indicated that I provide my opinion or my knowledge is based on information from others, in which case I believe that information to be true.
4. I acknowledge that it is my duty to provide evidence in relation to this proceeding as follows:
 - (a) to provide opinion evidence that is fair, objective and non-partisan;
 - (b) to provide opinion evidence that is related only to matters that are within my area of expertise; and
 - (c) to provide such additional assistance as the court may reasonably require to determine a matter in issue.
5. I acknowledge that the duty referred to above prevails over any obligation which I may owe to any party by whom or on whose behalf I am engaged.
6. In preparing this affidavit, I have reviewed the affidavits of Oliver Chrzan, Lori-Anne Deborba and Jonathan Levine, delivered by CarGurus.
7. Since I swore my First Affidavit, I have earned an additional qualification. I earned my GIAC Security Essentials Certification (GSEC), as well as attended the SANS training course titled FOR578: Cyber Threat Intelligence.

I. INTRODUCTION

8. In this Affidavit, I will refer to the 144,974 matching paired images described in my First Affidavit as the “First Batch.” This affidavit describes my collection of an additional three sets of images and their associated data from the CarGurus website, cargurus.com, and the electronic comparison of those images with sets of images and associated data provided to me by Trader, or that I collected myself from the Trader website.
9. The data collection and analysis described in this affidavit was performed using three unique and separate servers. The servers were designated the “Secondary” server, the “Tertiary” server and the “Primary Confirmation” server. The naming convention for the servers describes their roles in the overall collection and analysis of data for this process.
10. The Secondary server data set was comprised of 170,596 images and vehicle metadata for 12,079 unique VIN that I am advised by Allen Wales were added to dealer websites administered by Trader between October 19, 2015 and November 11, 2015 and are images that Trader alleges it owns.
11. The Tertiary server data set was comprised of 371,187 images and vehicle metadata for 29,504 unique VIN that I am advised by Allen Wales were added to dealer websites administered by Trader between November 12, 2015 and January 15, 2016 and are images that Trader alleges it owns.
12. The Primary Confirmation server data set was comprised of 198,156 images and vehicle metadata for 19,257 unique VINs that I used to collect the First Batch and that I mentioned at paragraph 13 of my First Affidavit. The purpose of the Primary Confirmation Server was to

confirm whether any images from the First Batch were still accessible by users on the CarGurus website as of February 4, 2016.

13. As described in my First Affidavit with respect to the First Batch, I presented the results of these three comparison exercises in a manner that any pair of images that I technologically determined were very similar or the same could be manually reviewed to determine if visually they were in fact the same image.
14. The steps I took during the collection and comparison processes, unless otherwise noted below, are described in detail in my First Affidavit in paragraphs 31 through 122.
15. As described in my First Affidavit, when I first started work on this process, Trader provided me with computer programs, called scripts and applications, to facilitate these processes. I extensively reviewed these scripts and applications (and additional versions with which I was later provided) to determine if I was satisfied that they accomplished what I needed in a reliable manner. Sometimes I concluded that a script or application was appropriate and sometimes I modified a script or application to improve it. Finally, sometimes I developed my own computer programs and database structures.
16. Applying my expertise, whether a computer program originated from me or Trader, the final version of the computer programs and databases I used to accomplish the tasks described below yielded reliable results.
17. At paragraph 119 below is a table summarizing the numerical results of the efforts I describe in this affidavit.

A. Secondary Server

18. The Secondary server was designated to collect and analyze data from the CarGurus website that had been uploaded between October 19, 2015 and November 11, 2015 to a website administered by Trader.
19. The database provided to me by Trader for the Secondary server collection contained a line item for each of 170,596 images associated with 12,079 unique vehicles as identified by their vehicle identification number (VIN). Each vehicle was associated with an average of 14 images, though some vehicles had more images and some had fewer.
20. Trader also provided a file containing all of the images associated with the 12,079 vehicles, as identified by VIN.
21. Between November 30, 2015 and December 15, 2015, using the techniques described in my First Affidavit, I collected 41,059 images and downloaded associated webpages from the CarGurus website to the Secondary server.
22. Between January 6, 2016 and January 24, 2016, as described below, I compared using electronic means the images collected from the CarGurus website with the images provided to me by Trader. This process yielded many sets of matched pairs of images.

B. Tertiary Server

23. The Tertiary server was designated to collect and analyze data from the CarGurus website that had been uploaded between November 12, 2015 and January 15, 2016 to a website administered by Trader.

24. The database provided to me by Trader for the Tertiary server collection contained a line item for each of 371,187 images associated with 29,504 unique vehicles as identified by their vehicle identification number (VIN). Each vehicle was associated with an average of 12 images, though some vehicles had more images and some had fewer.
25. Trader did not provide image files for the vehicles used by the Tertiary server. I collected these images directly from the Trader website in a process that I describe below.
26. Between January 18, 2016 and February 6, 2016, using the techniques described in my First Affidavit, I collected 55,482 images and downloaded associated webpages from the CarGurus website to the Tertiary server.
27. Between February 6, 2016 and February 10, 2016, as described below, I compared using electronic means the images collected from the CarGurus website with the images I collected from the Trader website. This process yielded many sets of matched pairs of images.

C. Primary Confirmation Server

28. The Primary Confirmation server was designated to collect and analyze data from the CarGurus website that had been uploaded between January 1, 2015 and October 19, 2015 to a website administered by Trader. Trader had previously provided me with a database and image files for the First Batch, as described in my First Affidavit.
29. Between January 28, 2016 and February 6, 2016, using the techniques described in my First Affidavit, I collected 35,280 images and downloaded associated webpages from the CarGurus website to the Primary Confirmation server.

30. Between February 6, 2016 and February 10, 2016, as described below, I compared using electronic means the images collected from the CarGurus website with the images provided to me by Trader. This process yielded many sets of matched pairs of images.

D. Data Presentation and Manual Reviews

31. Finally, between January 25, 2016 and February 29, 2016, I created, monitored and managed three separate presentation environments and created unique user accounts for a team of Trader employees to manually review these three sets of matched pairs of images.

32. After the manual review team completed its work on February 29, 2016, I organized and provided to Trader the results of its manual review of paired matching images, providing only those pairs that the Trader manual reviewers found were visually the same.

II. SUMMARY OF FINDINGS

A. Secondary Server

33. For the Secondary server, the bottom line of my efforts is a data set of 34,635 matching paired images (one image from CarGurus and one image from Trader), related to 3,705 unique vehicles as distinguished by VIN, that have been identified as being the same image (the "Second Batch").

34. This result was the product of several steps, summarized here and detailed below.

35. I collected from the CarGurus website images with respect to 12,079 unique vehicles as identified by VIN, by searching on the CarGurus website for the VINs provided to me by Trader. This result demonstrates that during the collection period there were 4,343 vehicles identified by VIN that were present both on the CarGurus website and in the Trader data set provided to me.

36. I collected 41,059 images from the CarGurus website, all associated with these same 4,343 vehicles.
37. Using the VIN as a common key between the CarGurus data set and the Trader data set, I identified 56,471 images in the Trader data set that were associated with these same 4,343 vehicles.
38. Using the technique perceptual hashing, I created a numerical representation of each of the 41,059 images from the CarGurus website and the 56,471 images from the Trader website. I then did a total of 689,035 perceptual hashes comparisons between the Trader and CarGurus data sets to identify any matching pairs of images.
39. The hash comparison process identified 41,481 pairs of images whose perceptual hash value was greater than a 94 percent similarity between the two images.¹
40. I performed deduplication, based on the VIN of the vehicle, which returned a total of 35,383 pairs of images whose perceptual hash value was greater than a 94% similarity between the two images.
41. I provided these matching pairs of images to Trader for manual visual comparison. The reviewers used a tool I provided to them to do the visual comparison, the results of which my tool recorded.

¹The findings indicate that there was a greater number of perceptual hash matches whose similarity index was greater than 94% than images collected from the CarGurus website. This result was expected due to the volume of images compared and the non-unique characteristics of the perceptual hashing algorithm and comparison process. I describe the process of perceptual hashing and how it differs from cryptographic hashing in my First Affidavit.

42. The manual review process combined with the deduplication process identified 34,635 unique image pairs that the manual reviewers identified as being the same. The balance of the image pairs provided to the reviewers were identified as being different.
43. Finally, of the 34,635 manually matched paired images, I executed database queries to identify 33,048 images that were collected from the CarGurus website whose file location was the CarGurus domain, cargurus.com. The balance, 1,587 images, had a file location other than cargurus.com, indicating that they were being hosted on a third party server, although communicated to users by the cargurus.com website by telecommunication through the Internet.

B. Tertiary Server

44. For the Tertiary server, the bottom line of my efforts is a data set of 38,247 matching paired images (one image from CarGurus and one image from Trader), related to 3,326 unique vehicles as distinguished by VIN, that have been identified as being the same image (the "Third Batch").
45. This result was the product of several steps, summarized here and detailed below.
46. I collected from the CarGurus website images with respect to 29,504 unique vehicles as identified by VIN, by searching on the CarGurus website for the VINs provided to me by Trader. This result demonstrates that during the collection period there were 10,758 vehicles identified by VIN that were present both on the CarGurus website and in the Trader data set provided to me.
47. I collected 55,482 images from the CarGurus website, all associated with these same 10,758 vehicles.

48. Using the VIN as a common key between the CarGurus data set and the Trader data set, I identified 164,586 images in the Trader data set that were associated with these same 10,758 vehicles.
49. Using the technique perceptual hashing, I created a numerical representation of each of the 55,482 images from the CarGurus website and the 164,586 images from the Trader website. I then did a total of 965,644 perceptual hashes comparisons between the Trader and CarGurus data sets to identify any matching pairs of images.
50. The hash comparison process identified 47,504 pairs of images whose perceptual hash value was greater than a 94 percent similarity between the two images.
51. I performed deduplication, based on the VIN of the vehicle, which returned a total of 39,202 pairs of images whose perceptual hash value was greater than a 94% similarity between the two images.
52. I provided these matching pairs of images to Trader for manual visual comparison. The reviewers used a tool I provided to them to do the visual comparison, the results of which my tool recorded.
53. The manual review process combined with the deduplication process identified 38,247 unique image pairs that the manual reviewers identified as being the same. The balance of the image pairs provided to the reviewers were identified as being different.
54. Finally, of the 38,247 manually matched paired images, I executed database queries to identify 12,320 images that were collected from the CarGurus website whose file location was the CarGurus domain, cargurus.com. The balance, 25,927 images, had a file location other than

cargurus.com, indicating that they were being hosted on a third party server, although communicated to users by the cargurus.com website by telecommunication through the Internet.

C. Primary Confirmation Server

55. For the Primary Confirmation server, the bottom line of my efforts is a data set of 23,534 matching paired images (one image from CarGurus and one image from Trader), related to 2,077 unique vehicles as distinguished by VIN, that have been identified as being the same image. This means that of the 144,974 matching paired images related to 19,258 unique vehicles as distinguished by VIN described in my First Affidavit, 23,534 images were still available on the CarGurus website as of February 4, 2016 (the “Primary Confirmation Batch”).

56. This result was the product of several steps, summarized here and detailed below.

57. Attached as Exhibit “B” to the affidavit of Lori-Anne Deborba, filed by CarGurus, is an email from Jonathan Colombo to Peter Ruby dated January 17, 2016 stating that “all of the photos identified in the Woodburn-Davis affidavit have been removed from the CarGurus’ website and the links are no longer accessible.” Attached as Exhibit “C” to the affidavit of Lori-Anne Deborba is copy of a letter from Jonathan Colombo to Peter Ruby dated January 26, 2016 that purports to “confirm that as of January 17, 2016, none of the photographs at issue were reachable via the internet.” These statements are incorrect. Out of the 144,974 matched images that I identified as being on the CarGurus website in my First Affidavit, as of February 4, 2016, 16% remained on the CarGurus website, and therefore accessible/reachable via the Internet, after Mr. Colombo states they were removed.

58. As noted above, the total number of unique VIN from the First Batch collection was 19,258. During the process of importing the data set for the Primary Confirmation server one VIN,

194678S4158020000, was inadvertently omitted. This resulted in 19,257 total unique VIN being imported to the Primary Confirmation server.

59. On February 4, 2016, I collected from the CarGurus website images with respect to 19,257 unique vehicles as identified by VIN, by searching on the CarGurus website for the VINs associated with the First Batch. This result demonstrates that during the collection period there were 7,872 vehicles identified by VIN that were present both on the CarGurus website and in the first Trader data set provided to me.
60. I collected 35,280 images from the CarGurus website, all associated with these same 7,872 vehicles.
61. Using the VIN as a common key between the CarGurus data set and the Trader data set, I identified 30,529 images in the Trader data set that were associated with these same 7,872 vehicles.
62. Using the technique perceptual hashing, I created a numerical representation of each of the 35,280 images from the CarGurus website and the 30,529 images from the Trader website. I then did a total of 615,578 perceptual hashes comparisons between the Trader and CarGurus data sets to identify any matching pairs of images.
63. The hash comparison process identified 26,809 pairs of images whose perceptual hash value was greater than a 94 percent similarity between the two images.
64. I performed deduplication, based on the VIN of the vehicle, which returned a total of 23,736 pairs of images whose perceptual hash value was greater than 94% similarity between the two images.

65. I provided these matching pairs of images to Trader for manual visual comparison. The reviewers used a tool I provided to them to do the visual comparison, the results of which my tool recorded.
66. The manual review process combined with the deduplication process identified 23,534 unique image pairs that the manual reviewers identified as being the same. The balance of the image pairs provided to the reviewers were identified as being different.
67. Finally, of the 23,534 manually matched paired images, I executed database queries to identify 11,886 images that were collected from the CarGurus website whose file location was from the CarGurus domain, cargurus.com. The balance, 11,648 images, had a file location other than cargurus.com, indicating that they were being hosted on a third party server, although communicated to users by the cargurus.com website by telecommunication through the Internet.
68. The details of the key concepts and terminology that I used to conduct the comparison are described at paragraphs 31-71 of my First Affidavit.

III. METHODOLOGY

69. The initial manual examination of the CarGurus website and confirmation of VIN searches is described in my First Affidavit at paragraphs 72-79. I also used the same basic collection methodology described in paragraph 80 of my First Affidavit.

A. Secondary Server Collection

70. The Secondary server collection methodology used scripts and applications that were developed by Trader which I reviewed and edited when necessary, as described in my First Affidavit.

B. Tertiary and Primary Confirmation Server Collections

71. There were some changes to the structure and location of the images stored on the CarGurus website between the initial collection dates in November 2015 and February 2016. There were instances where the format of the URL to the site that hosted the image had changed from the initial structure used to present the image in November 2015. The result of this modification to the CarGurus website was that the images were no longer almost exclusively hosted on the CarGurus domain, cargurus.com. These changes required that the collection scripts be modified to accommodate URL length and format. As a result of these changes, the Tertiary and Primary Confirmation server collections did not perform the substitution of the file name for the JPEG image to collect a 1024x768 resolution image. Once the image file was located on the target webserver, it was downloaded regardless of size. As I note below and in paragraphs 60-62 and Appendix G of my First Affidavit, the aHash algorithm is capable of comparing two images of dissimilar size and creating a reliable similarity index value.
72. The images that were collected for the First Batch and the Second Batch in November 2015 were almost exclusively hosted from the CarGurus domain. This meant that the URL used to link to the images displayed on the CarGurus webpage pointed at a file hosted on a server within the CarGurus domain, typically cargurus.com. At some point in time between November 2015 and January 2016, the location of many linked images displayed on the CarGurus webpages began pointing to servers outside of the CarGurus domain.
73. Specifically, during the first image collection exercise in November 2015, there were 138,303 images that were manually confirmed to be matches between the Trader data set and the CarGurus data set that were downloaded directly from the CarGurus domain. There were 6,671

images that were manually confirmed to be matches between the Trader data set and the CarGurus data set that were downloaded directly from non-CarGurus domains.

74. When the same VIN data was used during the collection for the Primary Confirmation server there were 11,886 images downloaded directly from the CarGurus domain and 11,648 images downloaded from non-CarGurus domains.
75. I performed the same analysis for the breakdown of the image location domains for the Secondary data set. This data was collected in late November 2015. The results showed that there were 33,048 images downloaded from the CarGurus domain and 1,587 images downloaded from non-CarGurus domains.
76. I performed the same analysis for the breakdown of domains for the Tertiary data set. This data was collected in late January 2016. The results showed that there were 12,320 images downloaded from the CarGurus domain and 25,927 images downloaded from non-CarGurus domains.
77. Based on this information, I believe that CarGurus made a modification to its image hosting approach sometime after the data collection for the Primary and Secondary servers. The strategy change was clearly a redistribution of images hosted on servers within the CarGurus domain, cargurus.com, to displaying images hosted on other domains.

C. Data Storage and Creation Of Hash Values for Images

78. For each of the Secondary, Tertiary and Primary Confirmation servers, I created a Microsoft Windows 2012 Server instances using Amazon's Elastic Compute Cloud (EC2) service, as described in paragraphs 81-83 of my First Affidavit.

79. Each server used a slightly different combination of data to collect the results from the CarGurus website.
80. For the Primary Confirmation server, in addition to the creation of the database, Trader supplied vehicle images that I uploaded to the Primary Confirmation server. The images were described by the Trader image data file and their filename contained a unique serial number. These images were used in processes described below.
81. I used the data from the previous collection in November 2015 to match the VIN for the vehicle images that were previously collected, compared and manually confirmed to be the same and re-injected the VIN into the CarGurus website Instant Market Value form.
82. For the Secondary server, in addition to the creation of the database, Trader supplied vehicle images that I uploaded to the Secondary server. The images were described by the Trader image data file and their filename contained a unique serial number. These images were used in processes described below.
83. The images for the Tertiary server were collected directly from the Trader website using a custom scraping application developed by Trader that I reviewed and the database of Trader vehicles as a reference to use to select the relevant vehicles.
84. The scraping application then searched the returned webpage for URLs which linked to images of the vehicle.

D. Secondary Server Image Collection

85. The process used to collect the images for the Secondary server data set is the same as the process described in paragraphs 85-94 of my First Affidavit.

86. Upon completion of the collection process, the vehicle metadata and images from the Secondary server were transferred to the primary server and the results were merged into a single set for the image comparison processing.
87. At the conclusion of the scraping exercise, each of the 12,079 VINs provided by Trader was automatically and individually entered by the collection application to the CarGurus search by VIN webpage form.
88. The results of the collection was that there were 4,343 CarGurus vehicles whose VIN matched the list of Trader vehicles and a total of 41,059 images were downloaded from the CarGurus website. Of these images, a total of 33,048 were downloaded from CarGurus website and 1,587 images were downloaded from non-CarGurus websites.

E. Tertiary and Primary Confirmation Server Image Collection

89. During the first collection of data and the collection for the Secondary server, the images' resolution was substituted in the collection process to 1024x768 in order to capture an identical resolution to the images provided by Trader.
90. For the Tertiary server and the Primary Confirmation server, the image resolution was not substituted. Based on the results of the first and second data collections, I determined that the aHash algorithm was robust and efficiently performed accurate automated similarity calculations for visually similar images even when the resolution and image size was dissimilar.
91. For all servers, regardless of the target domain, the scraping application iterated through the list of Trader VIN numbers and inserted each VIN into the CarGurus search page. This generated responsive data from the CarGurus website in the form of HTML files.

92. The scraping application saved each HTML file for a vehicle in a local folder and parsed the results to record the following information: detail model id, listing VIN, year, make, model, trim, price, dealer name, location, kilometres, stock number, days on market, URL and download path to a file on the collection server.
93. The download path is the relative location on the collection server where the HTML webpage file for the vehicle was saved. This file contained the image URLs.
94. For each vehicle image collected from the webpage, the scraping application would then create a record in a new file which contained the photo model ID, the detail model ID and the photo URL.
95. The collection application would then download the image from the CarGurus or non-CarGurus website and save the file to a local folder.
96. At the conclusion of the scraping exercise:
- (a) Each of the 29,504 VINs provided by Trader was automatically and individually entered by the collection application to the CarGurus search by VIN webpage form by the Tertiary server.
 - (b) Each of the 19,257 VIN from the first collection was automatically and individually entered by the collection application to the CarGurus search by VIN webpage form by the Primary Confirmation server.

97. The results of the collection were the following:
- (a) For the Tertiary data collection, there were 10,758 vehicles discovered on the CarGurus website whose VIN matched the list of Trader vehicles and a total of 55,482 images were referenced on the CarGurus website.
 - (b) For the Primary Confirmation data collection, there were 7,872 vehicles discovered on the CarGurus website whose VIN matched the list of Trader vehicles and a total of 35,280 images were referenced on the CarGurus website.
98. I then conducted the perceptual hashing and paired image comparison for the Secondary, Tertiary and Primary Confirmation servers described in paragraphs 98-101 of my First Affidavit.

IV. MANUAL REVIEW OF IMAGES

99. With respect to the manual review of the images for the three servers, I performed the same steps as described in paragraphs 102 to 121 of my First Affidavit for each of the three servers, except that rather than de-duplicating the results of the manual comparison of matched high similarity pairs as described in paragraph 11 of my First Affidavit, I performed the deduplication before the manual reviewers undertook their review.
100. I created a folder on the USB media attached as Appendix A for each server, named Primary_Conf_Reviewer_Reports, Secondary_Reviewer_Reports and Tertiary_Reviewer_Reports.
101. As with the First Batch, I created a folder for each of the reviewers' results. Each folder contains at least one HTML file named AppendixA-{SERVER_NAME}-{USERID}-x-xxxx.html and at least one directory containing the matched pair JPEG files named Appendix_B-

{SERVER_NAME}-{USERID}-x-xxxx. The SERVER_NAME refers to the name of the server, for example, PrimaryConfirmationServer, SecondaryServer and TertiaryServer. The USERID is the unique identifier or user name for the reviewer. The x-xxxx refers to the image count for the review file.

102. For example, the folder that contains the results for the reviewer ALAU who marked 3,151 pairs of images as the same when reviewing image sets on the Tertiary server would contain four HTML files named:

AppendixA-TertiaryServer-ALAU-1-1000.html,
AppendixA-TertiaryServer-ALAU-1001-2000.html,
AppendixA-TertiaryServer-ALAU-2001-3000.html,
AppendixA-TertiaryServer-ALAU-3001-3151.html

as well as four subfolders containing the JPEG images named:

AppendixA-TertiaryServer-ALAU-1-1000
AppendixA-TertiaryServer-ALAU-1001-2000
AppendixA-TertiaryServer-ALAU-2001-3000
AppendixA-TertiaryServer-ALAU-3001-3151

103. In order to view the first 1000 image pairs marked as the same by the reviewer ALAU, the file AppendixA-TertiaryServer-ALAU-1-1000.html could be opened using any modern browser.
104. Each HTML file contains a maximum of 1000 paired image sets that were marked the same by the reviewer.

105. Each record in the HTML file presents a set of paired images, one collected from the CarGurus website and one from the Trader website.
106. Additionally, each record presents the original website URL for each image and the vehicle information including the VIN, make, model, year, company name, moderator (which is the reviewer's account name on the presentation server), the date and time the image was downloaded from the CarGurus website in Coordinated Universal Time (UTC) and the field "Matched?" with the result "Same".
107. The field "Matched?" indicates the status of the image after it has been manually reviewed. A value of "Same" indicates that the images are (1) perceptually similar as calculated by the aHash algorithm comparison process and have a similarity index of greater than 94 percent and (2) manually verified to be visually the same image by a human reviewer.
108. I created a listing of the directory containing the reviewer reports and present the results in Appendix A.
109. Appendix U to my First Affidavit included an example of the manual review process and the steps and features of the paired image review page.

V. RESPONSE TO CHRZAN AFFIDAVIT

110. Oliver Chrzan states at paragraph 35 of his affidavit sworn March 3, 2016 that on the USB key provided as Appendix T to my First Affidavit, that "there are URLs to the CarGurus Website provided for only about 137,000 photographs. I do not know why roughly 7,000 URLs for the other photographs are missing."

111. I reviewed the data that was included as Appendix T to my First Affidavit and discovered an accidental omission of 1,000 matched pairs of images for the reviewer KMCQUEEN. I subsequently identified the missing information. A complete data set was provided to CarGurus along with an explanation of the events (which I verify is accurate) in a letter dated March 11, 2016 from Peter Ruby of Goodmans LLP to Jonathan Columbo and Amrita Singh of Bereskin & Parr LLP. A copy of that letter and the USB key containing the complete data set for reviewer KMCQUEEN is attached as Appendix C.
112. The cause of the missing data was a folder and HTML file for a data set for KMCQUEEN. Ms. McQueen reviewed and matched 23,240 pairs of images. Therefore, there should have been 24 HTML files and 24 subfolders within the folder labelled "KMCQUEEN" on the USB key (each containing a maximum of 1,000 paired image sets), but I only provided, accidentally, 23 HTML files and 23 subfolders with the original data set.
113. With the addition of the 1,000 KMCQUEEN matched paired images, the dataset provided to CarGurus contains a total of 144,974 matching image pairs as stated in my First Affidavit.
114. Within the First Batch, there were 138,303 images that had URLs from the CarGurus domain. The remaining 6,671 images were located on servers with the domain cobaltgroup.com (6,662) and dealer.com (9).

VI. NAMES OF PHOTOGRAPHERS

115. Trader requested that I provide a summary of the information for the names of the photographers from each of the First, Second and Third Batches. The information was collected from the databases on each of the Primary, the Secondary and the Tertiary servers.

116. I compiled and summarized the information in the attached spreadsheet Appendix B – CaptureRepQueries. The spreadsheet contains two worksheets for each server.
117. The first worksheet for each server contains a list of photographer user names and count of matched Trader images. The naming convention for these worksheets is Primary_SQL1, Secondary_SQL1 and Tertiary_SQL1.
118. The second worksheet for each server contains a list of list of all the Trader photo URLs along with the VIN#, capture date and is grouped by the photographer's user name. The naming convention for these worksheets is Primary_SQL2, Secondary_SQL2 and Tertiary_SQL2.

VII. OVERALL SUMMARY

119. Below is a table that provides a summary of the main findings described in this affidavit:

	Number of Matched Pairs of Images	Number of Matched Images hosted on CarGurus Domain	Number of Matched Images hosted on non-CarGurus Domain
First Batch	144,974	138,303 (95.4%)	6, 671(4.6%)
Secondary Batch	34,635	33,048 (95.4%)	1,587 (4.6%)
Third Batch	38,247	12,320 (32.2%)	25,927 (67.8%)
Primary Confirmation Batch	23,534	11,886 (50.5%)	11,648 (49.5%)

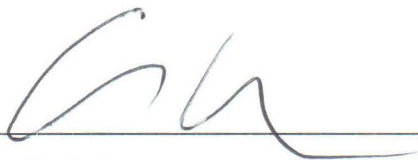
SWORN before me at the City of Toronto,
in the Province of Ontario on the 24th day of
March, 2016

A commissioner for taking affidavits
Name: Hannah Arthurs

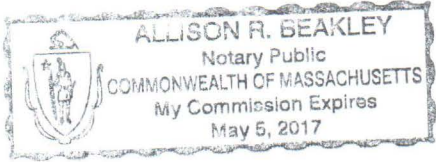
D'Arcy Woodburn-Davis

9

This is Exhibit "9" referred to in the Affidavit of Martha Blue sworn before me this 14th day of April, 2016.



Notary Public



TRADER

[Home](#)
[+ Company Overview](#)
[+ Management Team](#)
[Consumer Products](#)


Contact

Canadian Success Story Since 1975

TRADER Corporation is the leading digital player in Canadian automotive, boasting the top marketplaces [autoTRADER.ca](#) (which generates 14 million visits each month), [autoHEBDO.net](#), and the popular car buyer information site [Autos.ca](#).

TRADER helps consumers find the cars they want – with the largest inventory of used and new cars available in Canada, and encourages better vehicle buying decisions through helpful reviews, buyers guides, pricing tools, and more.

TRADER accelerates dealers' ability to market and manage their inventory through a powerful suite of solutions that we call the TRADER ADVANTAGE – with leading marketplaces, web solutions, web traffic solutions, inventory management solutions, and industry-leading customer service.

We've partnered with the best in the industry – vAuto, Dealer.com, and others to ensure that every solution we offer helps consumers make better choices, and dealers outpace the competition.

FOLLOW US



TRADER Corporation's brand portfolio includes:

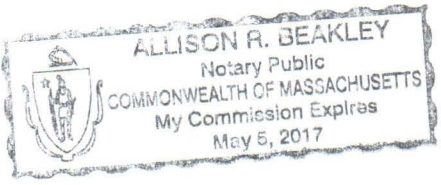
- [autoTRADER.ca™](#)
- [autoHEBDO.net™](#)
- [Autos.ca](#)

10

This is Exhibit "10" referred to in the Affidavit of Martha Blue sworn before me this 14th day of April, 2016.



Notary Public



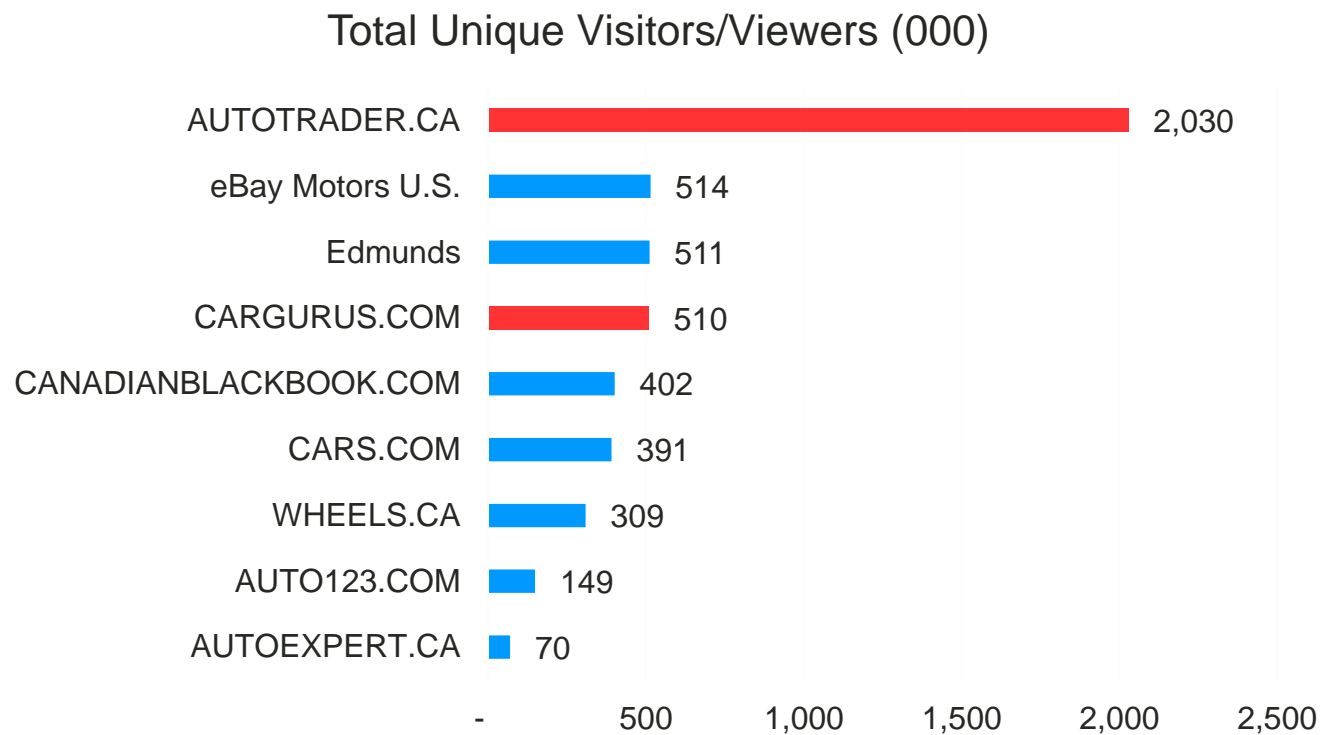
Overview Statistics

	Total Unique Visitors (000)	Total Views (MM)	Total Visits (000)	Total Minutes (MM)
Kijiji	4,960	236	34,639	180
AutoTrader	2,030	64	8,437	62
eBay Motors U.S.	514	5	1,038	4
Edmunds	511	2	692	2
CarGurus	510	4	1,400	4
Canadian Black Book	402	5	625	3
Cars.com	391	2	614	1
Wheels.ca	309	1	422	1
Auto123.com	149	1	240	1
AutoExpert	70	1	116	0
AutoTrader x CarGurus	4x	15x	6x	15x

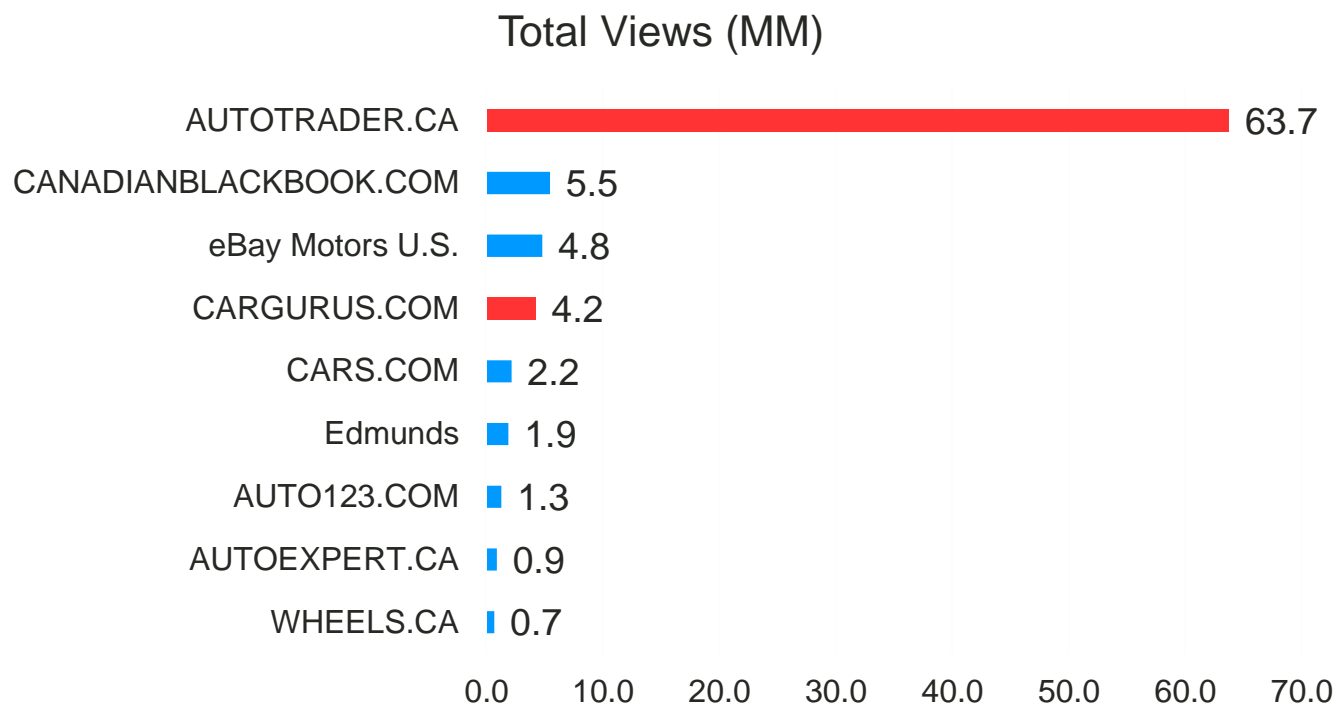


**WITHOUT
KIJIJI**

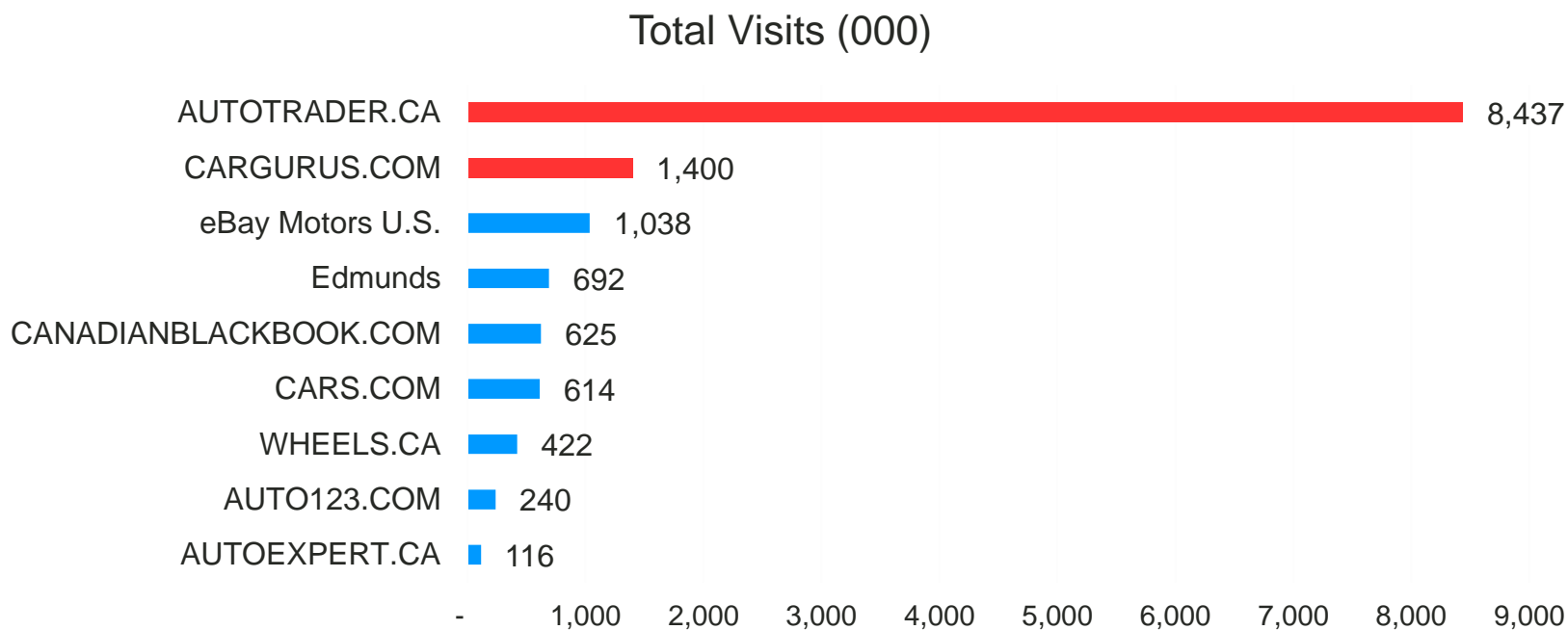
AutoTrader has 4x the number of Unique Visitors as the next largest competitor



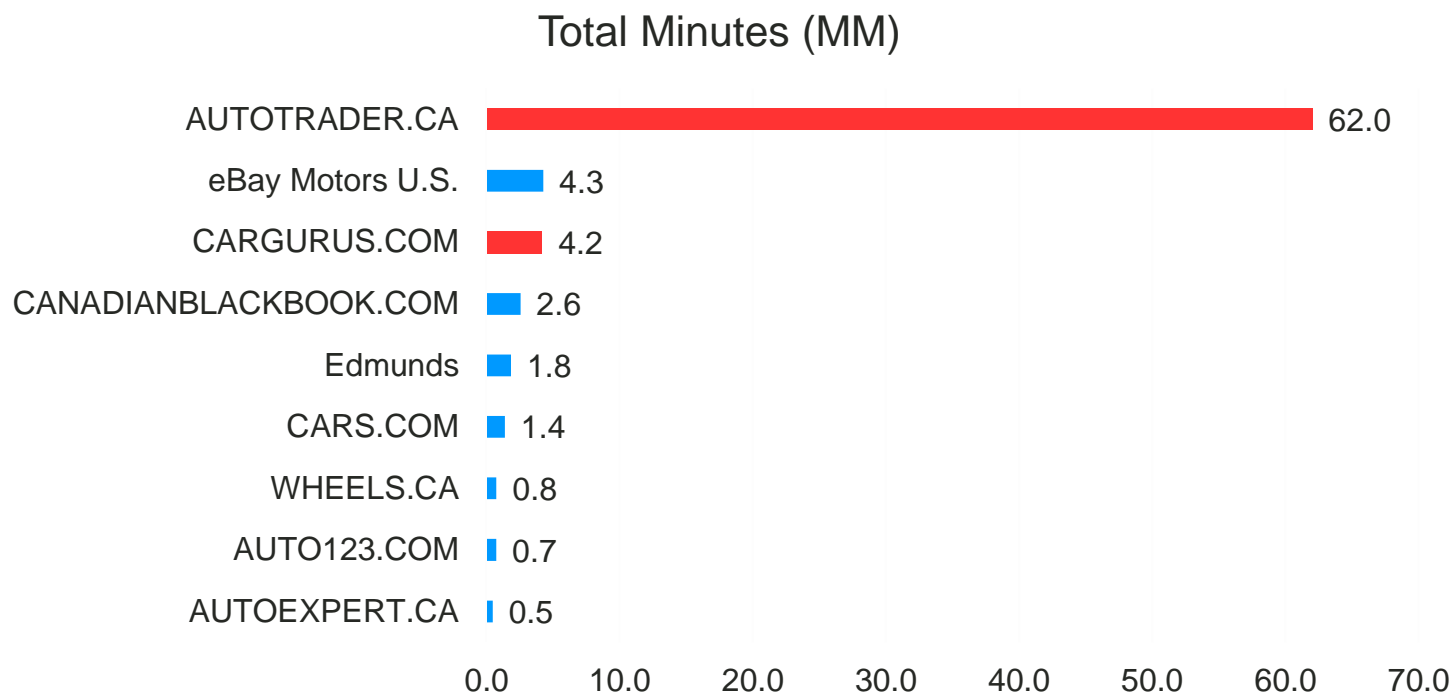
AutoTrader has 12x the number of Total Views as the next largest competitor and 15x CarGurus' Views



Autotrader has 6x the Total Visits as CarGurus



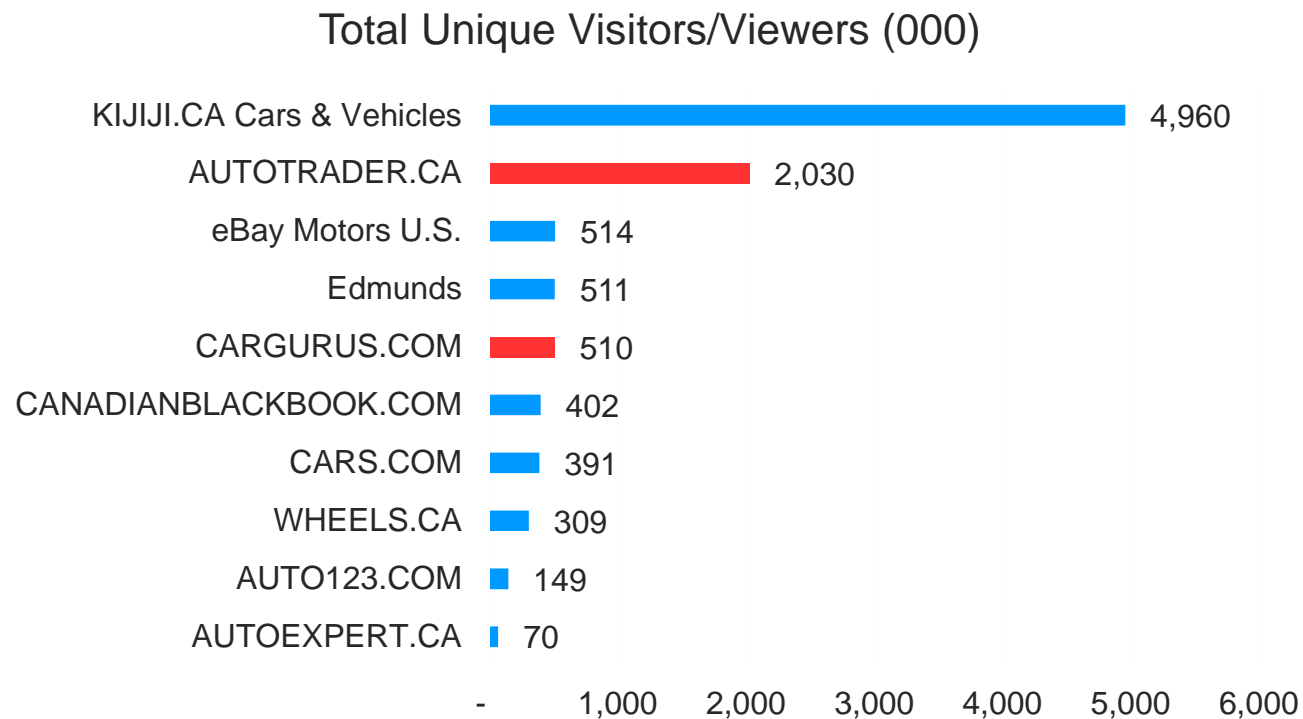
Total Minutes spent on Autotrader are 15x the time spent on CarGurus



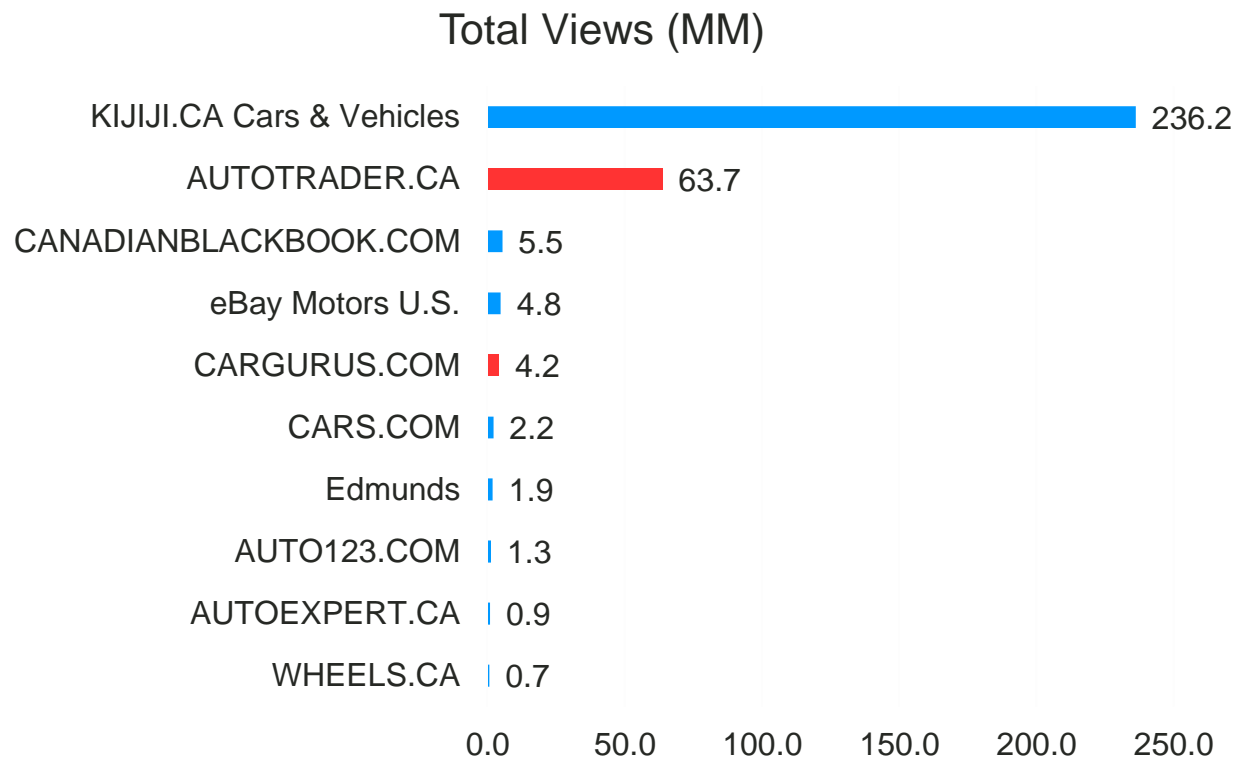
WITH
KIJIJI



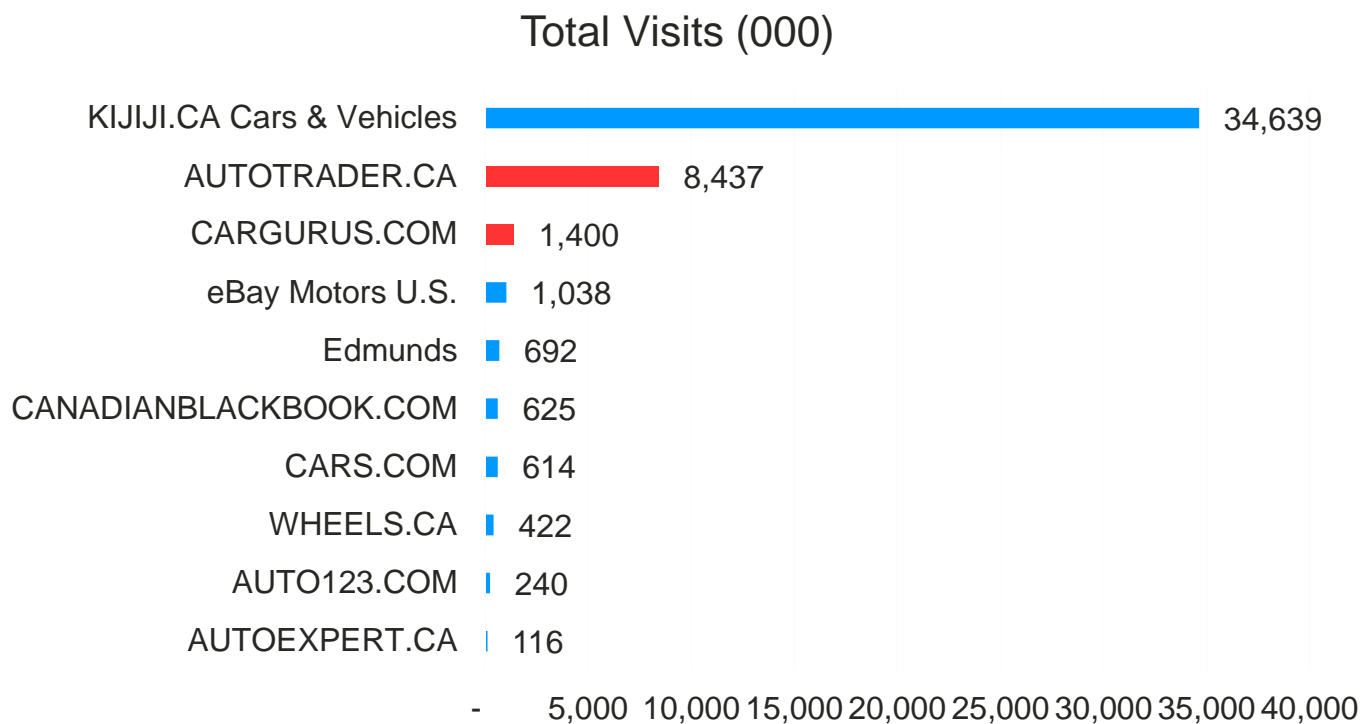
AutoTrader has 4x the number of Unique Visitors as CarGurus



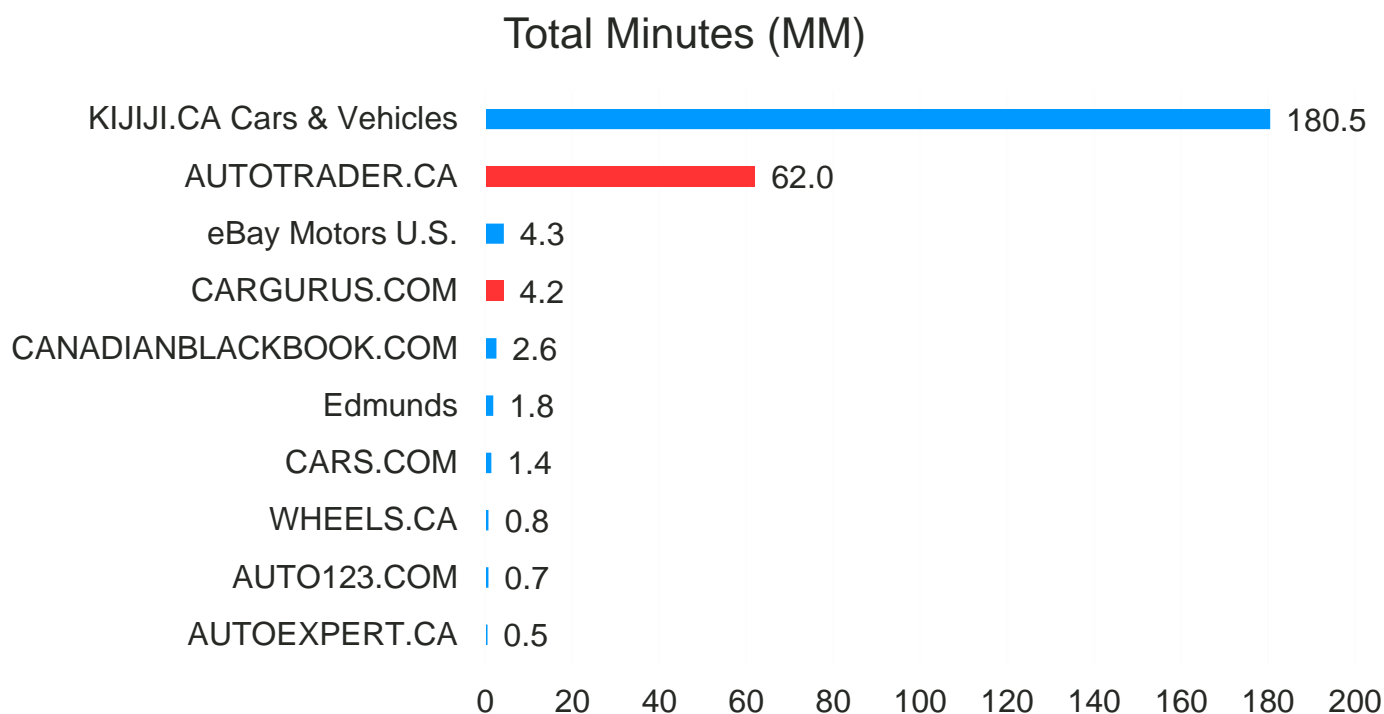
Autotrader has 15x the Total Views as CarGurus



Autotrader has 6x the Total Visits as CarGurus

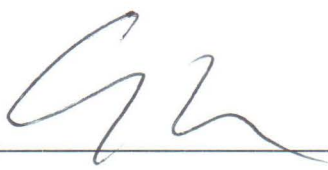


Total Minutes spent on Autotrader are 15x the time spent on CarGurus

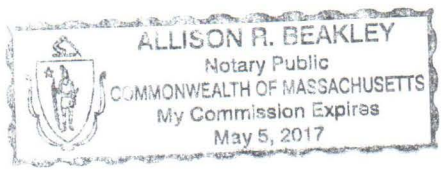


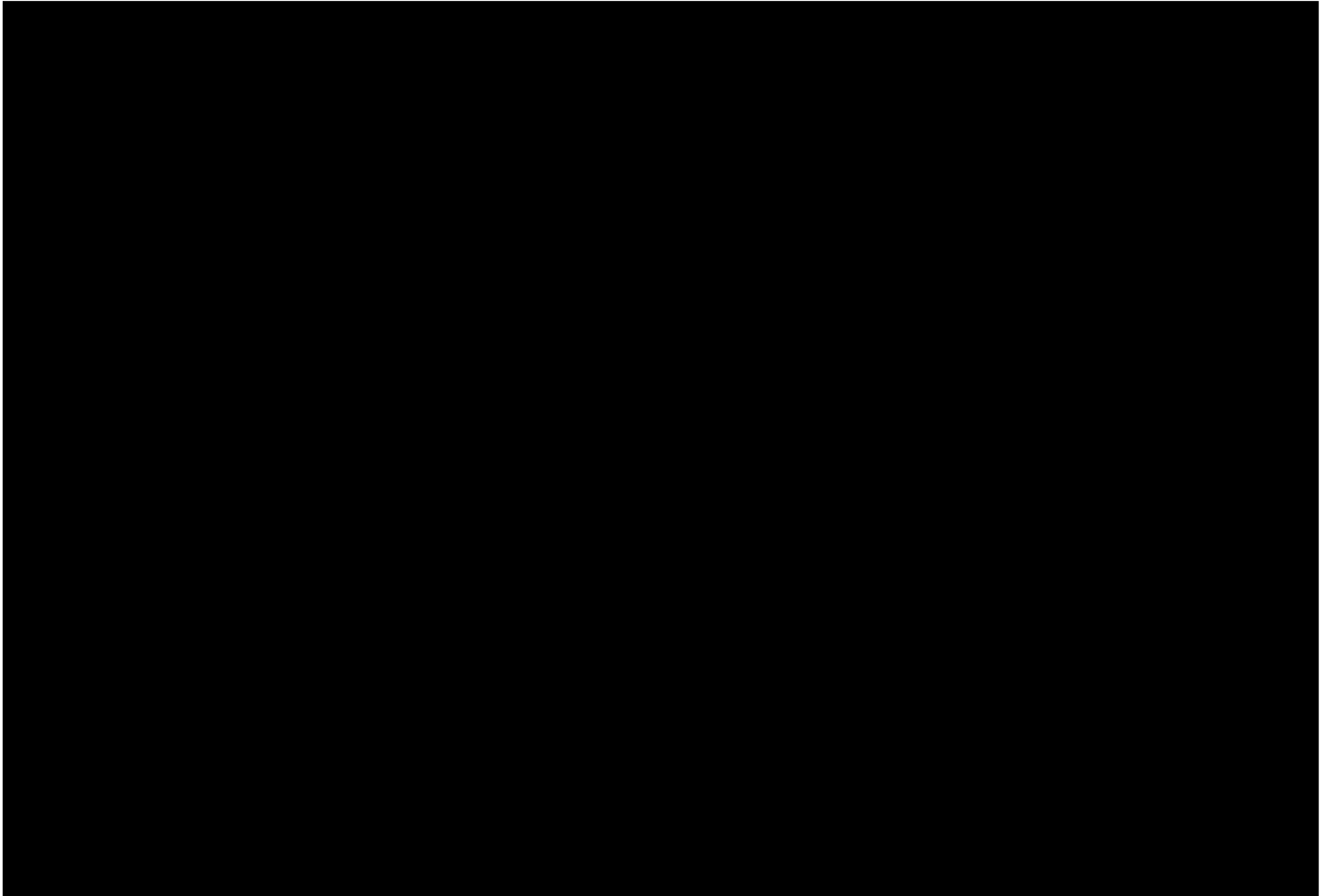
11

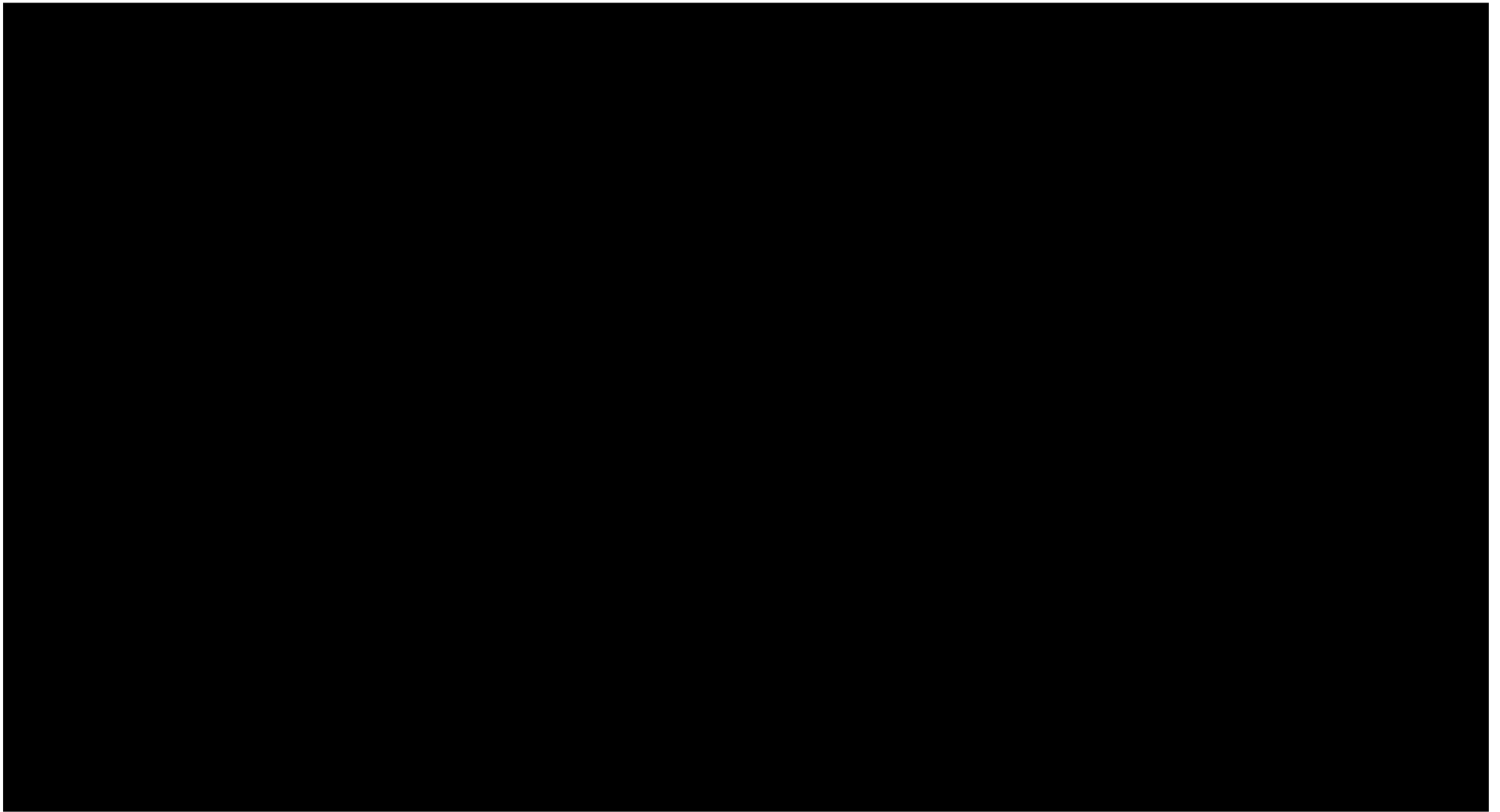
This is Exhibit "11" referred to in the Affidavit of Martha Blue sworn before me this 14th day of April, 2016.

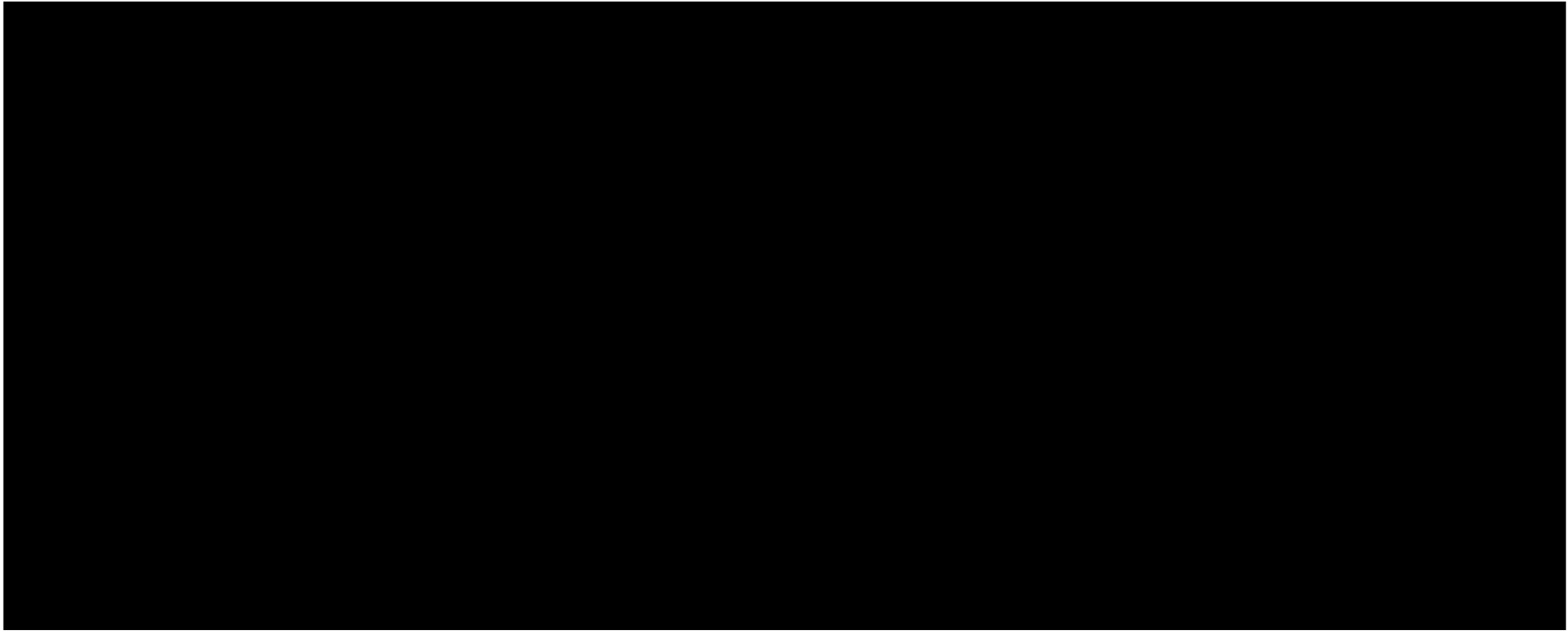


Notary Public

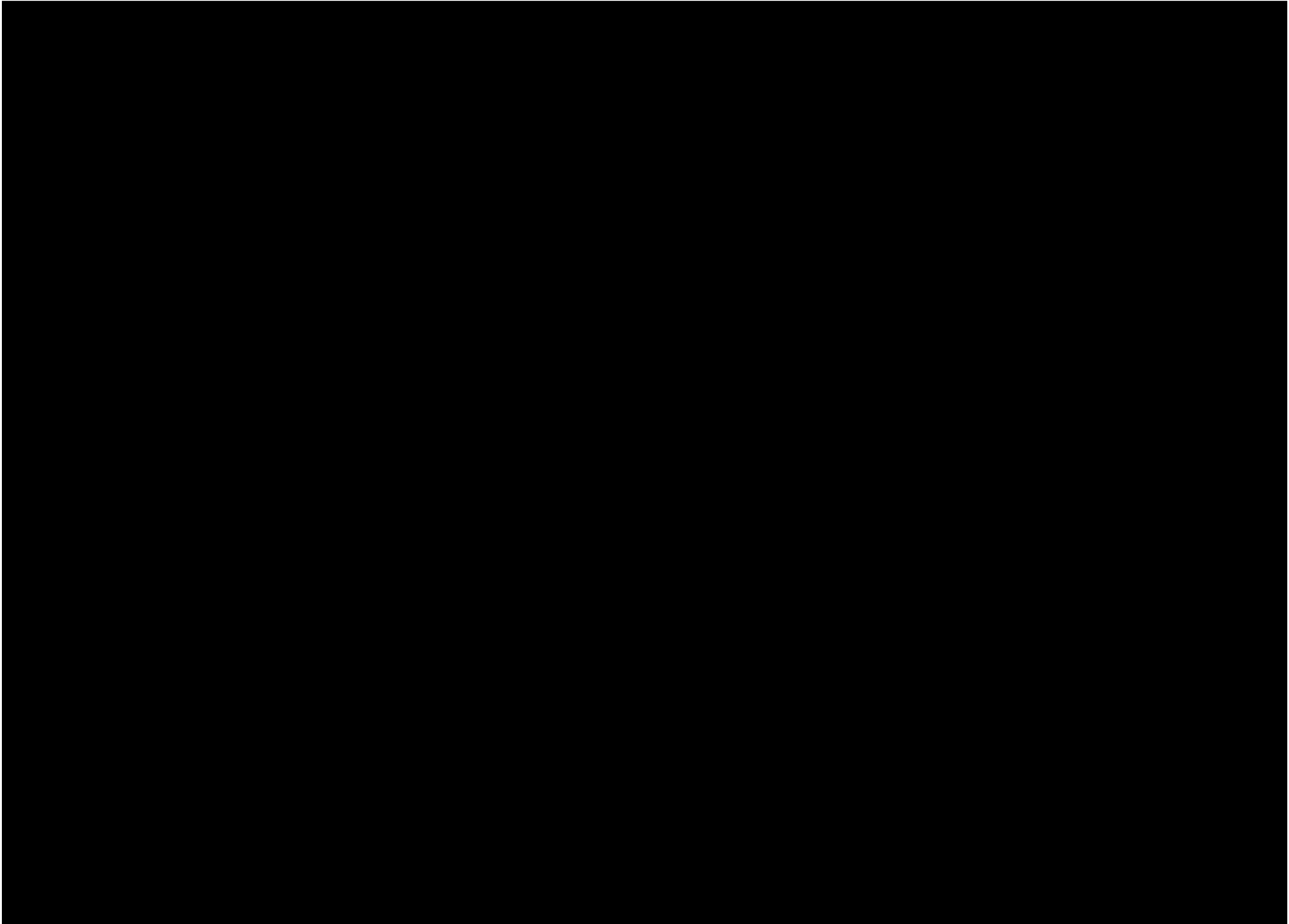




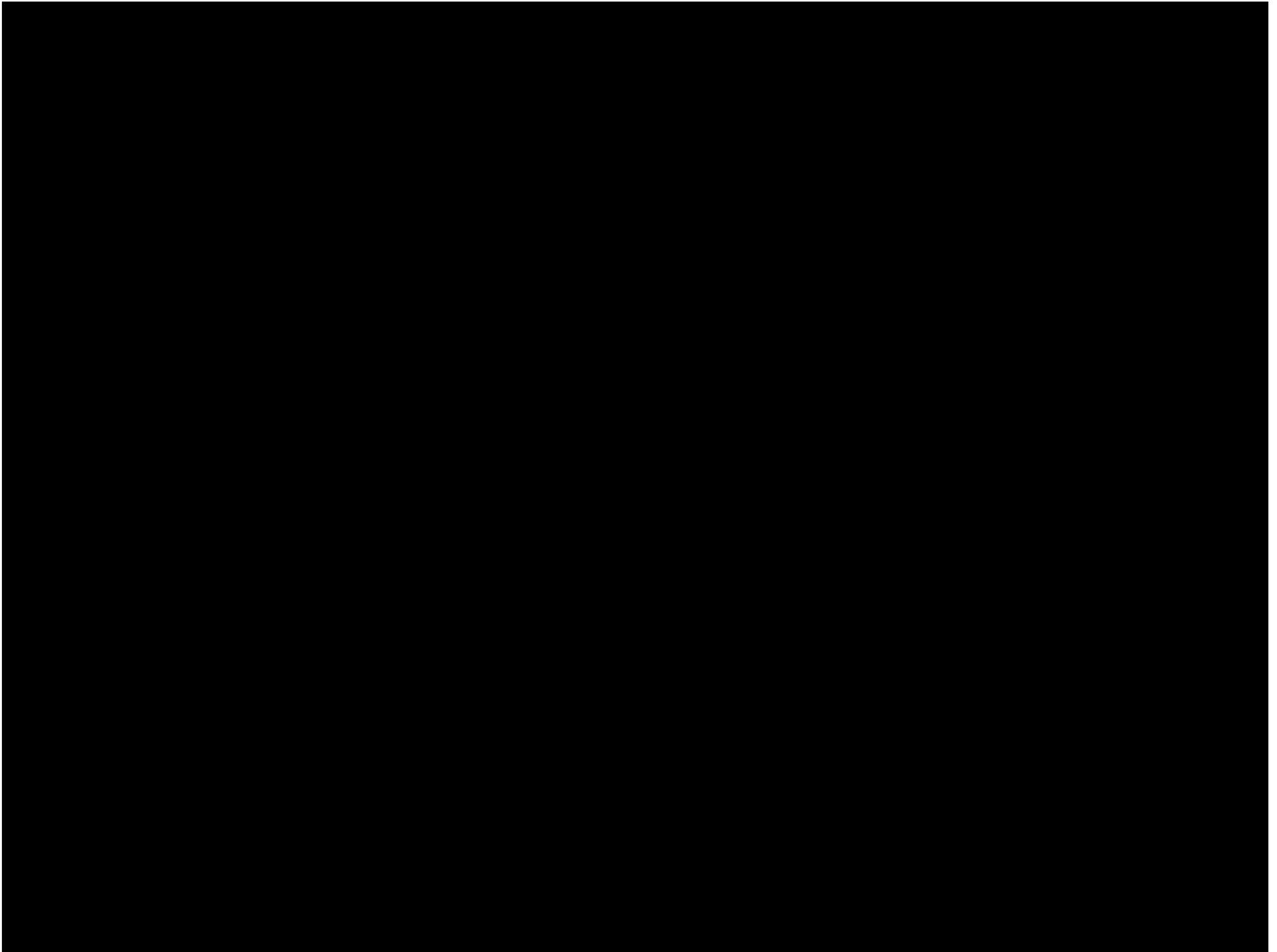


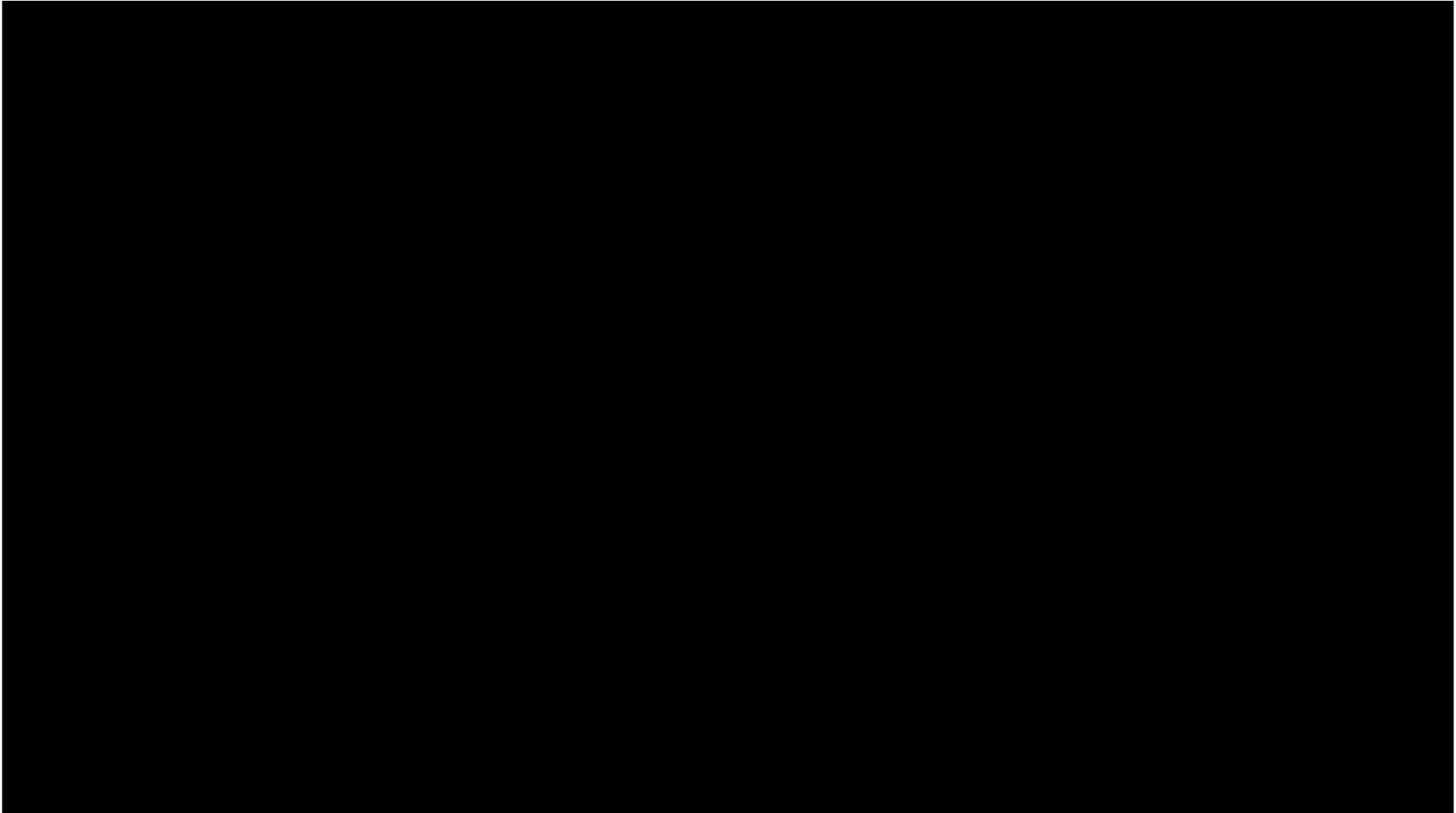












COMPETITION TRIBUNAL

IN THE MATTER OF the *Competition Act*, R.S.C. 1985, c. C-34 (the "Act");

AND IN THE MATTER OF an application by CarGurus, Inc. for an order pursuant to section 103.1 of the Act granting leave to bring an application under sections 75, 76, and 77 of the Act;

AND IN THE MATTER OF an application by CarGurus, Inc. for an order pursuant to sections 75, 76, and 77 of the Act;

BETWEEN:

CARGURUS, INC.

Applicant

- and -

TRADER CORPORATION

Respondent

**AFFIDAVIT OF MARTHA BLUE
(Sworn April 14, 2016)**

WEIRFOULDS LLP

Barristers & Solicitors
4100 - 66 Wellington Street West
P.O. Box 35, Toronto-Dominion Centre
Toronto, ON M5K 1B7

**Nikiforos Iatrou
Bronwyn Roe**

Tel: 416-365-1110
Fax: 416-365-1876

niatrou@weirfoulds.com
broe@weirfoulds.com

Lawyers for the Applicant

COMPETITION TRIBUNAL

IN THE MATTER OF the *Competition Act*, R.S.C. 1985, c. C-34 (the “**Act**”);

AND IN THE MATTER OF an application by CarGurus, Inc. for an order pursuant to section 103.1 of the Act granting leave to bring an application under sections 75, 76, and 77 of the Act;

AND IN THE MATTER OF an application by CarGurus, Inc. for an order pursuant to sections 75, 76, and 77 of the Act;

BETWEEN:

CARGURUS, INC.

Applicant

- and -

TRADER CORPORATION

Respondent

APPLICATION RECORD

**(Application for Leave Pursuant to
Section 103.1 of the *Competition Act*)**

WEIRFOULDS LLP

Barristers & Solicitors

4100 - 66 Wellington Street West

P.O. Box 35, Toronto-Dominion Centre

Toronto, ON M5K 1B7

Nikiforos Iatrou

Bronwyn Roe

Tel: 416-365-1110

Fax: 416-365-1876

niatrou@weirfoulds.com

broe@weirfoulds.com

Lawyers for the Applicant