

PUBLIC

File No.: CT-2015-010

Registry Document No.:

COMPETITION TRIBUNAL**IN THE MATTER OF** the Competition Act, R.S.C. 1985, c. C-34, as amended;**AND IN THE MATTER OF** an Application by Audatex Canada, ULC for an Order pursuant to section 103.1 granting leave to make application under section 75 of the *Competition Act*.**BETWEEN:**

COMPETITION TRIBUNAL TRIBUNAL DE LA CONCURRENCE FILED / PRODUIT November 17, 2015 CT-2015-010 Jos LaRose for / pour REGISTRAR / REGISTRAIRE	
OTTAWA, ONT	# 57

AUDATEX CANADA, ULC

Applicant

- and -

CARPROOF CORPORATION, TRADER CORPORATION, AND eBAY CANADA LIMITED

Respondents

AFFIDAVIT OF ALBERTO CAIRO
(Sworn November 17, 2015)

I, ALBERTO CAIRO, of the City of Dallas in the State of Texas, United States **MAKE OATH AND SAY:**

1. I am Chief of Staff for North America of Solera Holdings, Inc. ("**Solera**"), which indirectly wholly owns Audatex Canada, ULC ("**Audatex**"), the Applicant in this Application. I have been with Solera since 2014 and have been in this role since the beginning of 2015. I have the responsibility of ensuring the efficient operations of Audatex and Solera's other businesses in the region. As such, I have personal knowledge of the matters herein deposed to unless otherwise stated. Where information has been obtained from a third party, I state the source of that information, and confirm that I believe it to be true.

Nature of the Canadian Automobile Listings Data Required by Audatex

2. Audatex requires supply of the following data fields, where included in a given listing, in order to generate [REDACTED] total loss valuation reports (“**Valuation Reports**”):

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

3. As such, [REDACTED], Audatex does not require access to any data that is not publicly available on the Marktplaats B.V. (“**Marktplaats**”) website www.kijiji.ca (“**Kijiji**”) or the TRADER Corporation (“**Trader**”) websites (collectively, “**Auto Trader**”).

Audatex Had No Knowledge that [REDACTED]8. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]9. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]**Audatex Does Not Have Sufficient Alternative Sources of Canadian Listings Data**

10. In his affidavit, sworn November 5, 2015 (“**Antony Affidavit**”), Paul Antony, co-founder and Chairman of the Board of CarProof, suggests there are sufficient alternative sources of Canadian Listings Data potentially available to Audatex, in lieu of the Kijiji and Auto Trader data. This is not accurate. Otherwise, Audatex would not have made the significant efforts it did over a long period of time to come to agreement with CarProof. This is corroborated by CarProof itself in its July 13, 2015 letter to Audatex (attached as Exhibit 14 to the Toth Affidavit):

If Audatex is to continue its insurance loss valuation business using comparable listings or listings based algorithms, we will need to finalize our definitive agreement paperwork with greater timeliness and urgency.

11. First, as discussed at paragraph 17 of the Toth Affidavit, Canadians are most familiar with the Kijiji and Auto Trader brands. As such, there are no substitutes. It is for this reason and the reasons in Paragraph 13 below that Audatex's customer, [REDACTED], expressed [REDACTED]

12. Second, as discussed at paragraphs 16 and 29 of the Toth Affidavit, Kijiji and Auto Trader have the largest volumes of Canadian listings data. [REDACTED]

13. Third, at paragraph 55 of the Antony Affidavit, CarProof states that Audatex could seek supply of listings data directly from Canadian automobile dealerships or aggregators, such as Authenticom, Oasis, CDK Global and Reynolds & Reynolds. While these sources can provide some listings data for automobiles being sold by dealerships, they do not provide any listings data for automobiles being sold by private sellers. Kijiji, and to a lesser extent Auto Trader, are the two significant providers of listings data from private automobile sellers. Sufficient private listings data from Kijiji or Auto Trader is a [REDACTED] input to Audatex's Valuation Reports because:

- (a) Private sellers often rely on private listings when settling with their insurers and use private listings to verify the accuracy of their own Valuation Report;
- (b) In Audatex's experience, older automobiles, which are more likely to be replaced rather than repaired after accidents, are more frequently listed by private sellers than dealers; and
- (c) Certain parts of Canada appear to have higher rates of private automobile sales, and such listings are required to obtain sufficient comparables to allow Audatex to

provide Valuation Reports in these areas. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

14. Fourth, at paragraph 56 of the Antony Affidavit, CarProof states that Audatex could seek supply of sold data, such as from J.D. Power and Associates (“**J.D. Power**”), government registries, insurance companies and financial institutions. As explained in paragraph 48 of the Toth Affidavit, Audatex’s proprietary algorithms use automobile *listings* data, not sold data because Audatex believes this methodology generates a more accurate and relevant valuation. Further, since sold prices are not uniformly recorded, sold data is “noisy” and Audatex believes it produces less accurate results. A few examples are that the sold price may: (i) include irrelevant items, such as financing fees or warranty packages if sold by a dealership, (ii) be underreported to avoid taxes; and (iii) not include the value of a trade-in.

Audatex Is Already Suffering Consequences and Will Suffer Substantial Harm

15. Audatex’s evidence (at paragraph 9 of the Toth Affidavit) states that Audatex’s customers will not accept Valuation Reports underpinned by listings data that is more than [REDACTED] Approximately [REDACTED] have elapsed since Audatex has been without both Kijiji and Auto Trader data, when the Trader Agreement expired on August 31, 2015. [REDACTED]

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

16. At this time, Audatex is already suffering ill effects from the impact of the refusal to deal on its business.

[REDACTED]

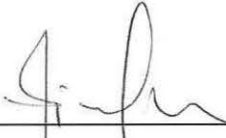
[REDACTED]

[REDACTED]

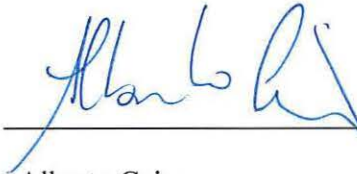
Confidential Information

20. I confirm that this Affidavit contains Confidential Information, as described in the Toth Affidavit, the disclosure of which would be likely to cause substantial harm to Audatex.

SWORN BEFORE ME at the City of)
Addison, in the State of Texas, United)
States, this 17th day of November,)
2015.)



A Commissioner, etc.

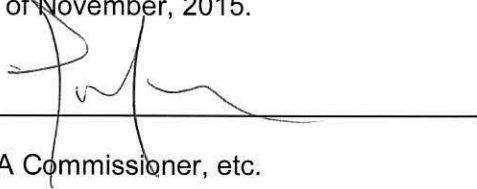


Alberto Cairo
Chief of Staff for North America, Solera



EXHIBIT “1”

This is **Exhibit "1"** referred to in the Affidavit
of Alberto Cairo sworn before me this 17th day
of November, 2015.



A Commissioner, etc.



REDACTED

EXHIBIT “2”

This is **Exhibit "2"** referred to in the Affidavit of Alberto Cairo sworn before me this 17th day of November, 2015.



A Commissioner, etc.



Browse Categories

Search

in used cars & trucks



My Location

Greater Toronto Area

Ontario > Toronto (GTA) > Mississauga / Peel Region > cars & vehicles > used cars & trucks in Mississauga / Peel Region > Ad ID 1116059882

[Back to result list](#) | [< Previous](#) | [Next >](#)

1976 Triumph TR6 WOW TR6/ LEATHER/ CONVERTIABLE

Watch | Share | Print | Report Ad



Date Listed 06-Nov-15
 Price **\$14,995.00** plus applicable taxes
 Accident History Report [Get CarProof Report](#)
 Address 2255 Dundas Street west, Mississauga, ON, L5K 1R6
[View map](#)

For Sale By Dealer
 Year 1976
 Trim WOW TR6/ LEATHER/ CONVERTIABLE
 Make [Triumph](#)
 Model [Other](#)
 Kilometers 126000
 Body Type Coupe (2 door)
 Transmission Manual
 Colour Red
 Drivetrain Other
 Fuel Type Gasoline
 Stock # MP-4364

Poster Contact Information



877-606-XXXX [Click to show](#)

[View poster's other Ads : Etoibcoke Motors I...](#)

[View Web Site : Etoibcoke Motors inc.](#)

Email poster

Your Email

Your Name

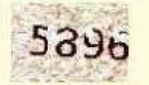
Phone Number (optional)

Message

Verification code

Can't read the code?

[Listen to the code](#)



Verification code

Send me a copy of email

[Send Email](#)

Kijiji filters emails for security reasons. By clicking on "Send Email", you consent to this action in accordance with our [Terms of Use](#) & [Privacy Policy](#).



Description



thousands of dollars spent on restoration, car is in immaculate condition for the year , very rear find, wont last long

Optional Equipment

- Air Conditioning
- Alloy Wheels
- Leather Interior
- Trip Odometer

POST **FREE AD**

OWNER REVIEWS

NEWS & FEATURES

0/4 Compared vehicles

Sign in

« Back to Search Results Cars, Trucks & SUVs » Triumph » TR » 1976 » Ontario » Mississauga » Ad Details

< Previous

3 of 4 Used Triumph for sale in Toronto

Next >

1976 Triumph TR6 WOW TR6/ LEATHER/ CONVERTIBLE - Mississauga \$14,995

Disclaimer Information: Please confirm with seller accuracy of information. Mileage recorded at time of listing. Taxes and license are not included in listing price.



Inquire About this Vehicle

☎ **1-866-641-XXXX**
Click to show

General Inquiry

Schedule Test Drive

Make an Offer

Name

Email

Phone

Hi, I found your listing on autoTRADER.ca and would like to know

Do you have a trade-in? Yes No

Send me a copy of this message

CHECK AVAILABILITY



Mississauga, Ontario

0.0 ★★★★★ (0 Review)

Visit our Website

Save

Compare

Tweet

G+

Share

Email

Print

Report Abuse

Used Status	None Warranty	Manual Transmission	Unknown Drivetrain	Unknown City	Unknown Highway	Unknown Passengers	Unknown Safety
-----------------------	-------------------------	-------------------------------	------------------------------	------------------------	---------------------------	------------------------------	--------------------------

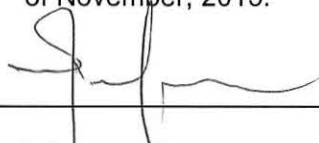
Make	Triumph	Transmission	4 Speed Manual
Model	TR6	Exterior Colour	Red
Kilometres	126,000 km	Interior Colour	Brown
Body Type	Coupe	Passengers	-
Style/Trim	WOW TR6/ LEATHER/ CONVERTIBLE	Doors	-
Engine	-	Fuel Type	Gas
Cylinders	-	City Fuel Economy	-
Stock Number	MP-4364	Hwy Fuel Economy	-
Drivetrain	-	Vehicle History Report	Request CarProof
Safety Rating	N/A		

4 Owner Reviews ★★★★★

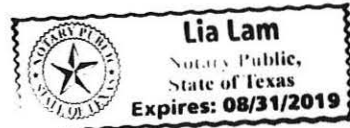
thousands of dollars spent on restoration, car is in immaculate condition for the year , very rear find, wont last long Price plus applicable taxes. Please contact dealer for more details

EXHIBIT “3”

This is **Exhibit "3"** referred to in the Affidavit of Alberto Cairo sworn before me this 17th day of November, 2015.

A handwritten signature in black ink, appearing to be 'S. Lam', written over a horizontal line.

A Commissioner, etc.



INTERNET ARCHIVE
WayBackMachine
125 captures
25 Nov 05 - 2 Apr 14

http://toronto.kijiji.ca/p-TermsAndConditions

Go

NOV DEC F
2
2006 2007 2

Sign In | Register



Free local classifieds

[Home](#) [Post Ad](#) [My Kijiji](#) [Discussion](#) [Help](#)

Toronto [Change City](#)

Help

[About](#)
[Safety Tips](#)
[Contact Kijiji](#)
[Policies](#)
[Privacy Policy](#)
[Terms & Conditions](#)

Kijiji Terms of Use

Introduction. Welcome to www.kijiji.ca ("Kijiji"). Thanks for stopping by. By accessing Kijiji you are agreeing to the following terms, which are designed to make sure that Kijiji works for everyone. This policy is effective 20/6/2007.

Using Kijiji. You will post in the appropriate category or area and will not do any of the following bad things:

- violate any laws or our [Prohibited Content Policy](#);
- be false or misleading;
- infringe any third-party right;
- distribute or contain spam, chain letters, or pyramid schemes;
- distribute viruses or any other technologies that may harm Kijiji or the interests or property of Kijiji users;
- impose an unreasonable load on our infrastructure or interfere with the proper working of the Kijiji;
- copy, modify, or distribute any other person's content;
- harvest or otherwise collect information about others, including email addresses, without their consent;
- bypass measures used to prevent or restrict access to Kijiji.


Abusing Kijiji. Please use the flagging system to tell us about any problems or offensive content so that together we can keep the site working properly. We may limit or terminate our service, remove hosted content and take technical and legal steps to keep users off Kijiji if we think that they are creating problems or acting inconsistently with the letter or spirit of our policies. However, whether we decide to take any of these steps, remove hosted content or keep a user off Kijiji or not, we do not accept any liability for monitoring Kijiji or for unauthorized or unlawful content on Kijiji or use of Kijiji by users.

Fees and Services. Using Kijiji is completely free. This includes posting an Ad, replying to an Ad, posting in the forums, etc. We may charge fees for premium services such as for featuring an Ad in the Featured Ads section. Our fees are quoted in Canadian Dollars, and we may change them from time to time. Our fees are non-refundable, and you are responsible for paying them when they're due. If you don't, we may limit your ability to use the services. If your payment method fails or your account is past due, we may collect fees owed using other collection mechanisms (for accounts over 180 days past due, we may deduct the amount owed from your PayPal account balance).

Content. Kijiji contains stuff from us, you, and other users. You agree not to copy, modify, or distribute Kijiji, our copyrights or trademarks. When you give us content, you are granting us a non-exclusive, worldwide, perpetual, irrevocable, royalty-free, sub-licensable right to exercise the copyright, publicity, and database rights to that content. (We need these rights to host and display your content.) If you believe that your rights have been violated, please notify our designated copyright agent at [Kijiji](#) and we will investigate the matter. We reserve the right to remove content where we have grounds for suspecting the violation of these terms or of any party's rights.

Liability. You agree not to hold us responsible for things other users post or do. As most of the stuff on Kijiji comes from other users, we do not guarantee the accuracy of postings or user communications or the quality, safety, or legality of what's offered. We also cannot guarantee continuous or secure access to our services. Accordingly, to the extent legally permitted we expressly disclaim all warranties, representations and conditions, express or implied, including those of quality, merchantability, merchantable quality, durability, fitness for a particular purpose and those arising by statute. We are not liable for any loss, whether of money (including profit), goodwill, or reputation, or any special, indirect, or consequential damages arising out of your use of Kijiji, even if you advise us or we could reasonably foresee the possibility of any such damage occurring. Some jurisdictions do not allow the disclaimer of warranties or exclusion of damages, so such disclaimers and exclusions may not apply to you.

Despite the previous paragraph, if we are found to be liable, our liability to you or any third party (whether in contract, tort, negligence, strict liability in tort, by statute or otherwise) is limited to the



greater of (a) the total fees you pay to us in the 12 months prior to the action giving rise to liability, and (b) 100 Euros.

[125 captures](#) 25 Nov 05 - 2 Apr 07

2

Personal Information. By using Kijiji, you agree to the collection, transfer, storage, and use of your personal information by Kijiji Limited, (the "data controller") on servers located in the United States, and in the European Union as further described in our [privacy policy](#) . You also agree to receive marketing communications from us unless you tell us that you prefer not receive such communications.

General. These terms and the other policies posted on Kijiji constitute the entire agreement between Kijiji Limited and you, superseding any prior agreements. This agreement is governed by the laws of Ireland. If we don't enforce any particular provision, we are not waiving our right to do so later. If a court strikes down any of these terms, the remaining terms will survive. We may automatically assign this agreement in our sole discretion in accordance with the notice provision below. Except for notices relating to illegal or infringing content, your notices to us must be sent by registered mail to Kijiji Limited, Unit 6, Blanchardstown Corporate Park, Dublin 15. We will send notices to you via the email address you provide, or by registered mail. Notices sent by registered mail will be deemed received five days following the date of mailing. We may update this agreement at any time, with updates taking effect when you next post or after 30 days, whichever is sooner. No other amendment to this agreement will be effective unless made in writing, signed by users and by us. Send questions, comments or complaints to Kijiji [Customer Service](#) .

[Help](#) | [About](#) | [Privacy Policy](#) | [Terms of Use](#) | [Contact Kijiji](#) | [Popular Searches](#)

Copyright © 2005-2007 Kijiji International Limited.

COMPETITION TRIBUNAL

IN THE MATTER OF the Competition Act, R.S.C. 1985, c. C-34, as amended;

AND IN THE MATTER OF an Application by Audatex Canada, ULC for an Order pursuant to section 103.1 granting leave to make application under section 75 of the *Competition Act*.

BETWEEN:

AUDATEX CANADA, ULC

Applicant

- and -

CARPROOF CORPORATION, TRADER CORPORATION, AND eBAY CANADA LIMITED

Respondents

REPLY RECORD
(Application for Leave Pursuant to Section 103.1 of the *Competition Act*)

McCarthy Tétrault LLP

Barristers & Solicitors
Suite 5300, Toronto Dominion Bank Tower
Toronto ON M5K 1E6

Donald B. Houston
Tel: (416) 601-7506
E-mail: dhouston@mccarthy.ca
Fax: (416) 868-0673

Julie K. Parla
Tel: (416) 601-8190
E-mail: jparla@mccarthy.ca

Jonathan Bitran
Tel: (416) 601-7693
E-mail: jbitran@mccarthy.ca

Lawyers for the Applicant