

Competition Tribunal



Tribunal de la Concurrence

Reference: *Audatex Canada, ULC v. CarProof Corporation*, 2015 Comp. Trib. 18
File No.: CT-2015-010
Registry Document No.: 62

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*.

B E T W E E N:

Audatex Canada, ULC

(applicant)

and

**CarProof Corporation, Trader Corporation, and
eBay Canada Limited**

(respondents)



Decided on the basis of the written record.
Before Judicial Member: Gascon J. (Chairperson)
Date of Order: November 20, 2015

ORDER DISMISSING A REQUEST FOR AN ORAL HEARING

[1] **FURTHER TO** a notice of application filed by Audatex Canada, ULC (“Audatex”) on October 1, 2015 for an order pursuant to section 103.1 of the *Competition Act*, RSC 1985, c C-34 (the “Act”) granting leave to bring a refusal to deal application under section 75 of the Act;

[2] **AND FURTHER TO** an order issued by the Tribunal on October 29, 2015 granting leave to CarProof Corporation (“CarProof”) and Marktplaats B.V. (“Marktplaats”) to file affidavit evidence, along the terms and conditions set out in such order, as part of their representations in writing in response to Audatex’ application for leave;

[3] **AND FURTHER TO** the responses filed by CarProof, Marktplaats and Trader Corporation on November 6, 2015, including affidavit evidence filed by each of CarProof and Marktplaats;

[4] **AND FURTHER TO** the reply filed by Audatex on November 17, 2015, which included reply affidavit evidence;

[5] **AND FURTHER TO** the requests made by each of CarProof and Marktplaats in their respective responses that there be an oral hearing with respect to this application for leave;

[6] **AND FURTHER TO** the statement made by Audatex in its reply that it is seeking an expedited resolution of the application and is not specifically requesting an oral hearing but that, given the extensive evidentiary record filed by the parties, it would be willing to attend one to assist the Tribunal with any questions that have arisen from the materials;

[7] **AND FURTHER TO** the letter filed by CarProof on November 18, 2015 requesting that the two affidavits filed by Audatex as part of its reply, along with the portions of its Memorandum of Fact and Law relying on such evidence, be struck from the record, and the letter of Audatex filed on November 18, 2015 responding to this request from CarProof;

[8] **WHEREAS** the parties have now submitted extensive written submissions as part of this application for leave, as well as detailed affidavit evidence in support of their respective positions;

[9] **AND WHEREAS** leave applications are intended to be summary processes and are to be dealt with summarily (*Symbol Technologies Canada ULC v Barcode Systems Inc.*, 2004 FCA 339);

THE TRIBUNAL ORDERS THAT:

[10] CarProof’s and Marktplaats’ request for an oral hearing is denied. Audatex’ application for leave shall be decided by the Tribunal on the basis of the written record.

[11] The issue of the admissibility of the reply affidavit evidence filed by Audatex shall be dealt with by the Tribunal in its Reasons for Order to be issued on this application for leave.

DATED at Ottawa, this 20th day of November, 2015.

SIGNED on behalf of the Tribunal by the Chairperson.

(s) Denis Gascon

COUNSEL

For the applicant:

Audatex Canada, ULC

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Julie K. Parla
Jonathan Bitran

For the respondents:

CarProof Corporation

Adam Fanaki

Trader Corporation

Michael Koch

eBay Canada Limited

Davit Akman