

**FILED / PRODUIT**

Date: June 29, 2011

CT-2011-006

Chantal Fortin for / pour  
REGISTRAR / REGISTRAIRE

OTTAWA, ONT.

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File No.: .....  
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 the Used Car Dealers Association of Ontario for an Order pursuant to section 103.1 granting leave to make application under sections 75 and 76 of the *Competition Act*.

**BETWEEN:**

**USED CAR DEALERS ASSOCIATION OF ONTARIO**

Applicant

- and -

**INSURANCE BUREAU OF CANADA**

Respondent

### **NOTICE OF MOTION PURSUANT TO SECTION 66 OF THE *COMPETITION TRIBUNAL* RULES**

1. **TAKE NOTICE THAT** the Applicant, Used Car Dealers Association of Ontario (“UCDA”), will make a motion to this Honourable Tribunal and requests that the Tribunal dispose of the motion without a hearing.
2. **AND TAKE NOTICE THAT** UCDA will rely on the Affidavit of Robert G. Beattie, sworn June 29, 2011 in support of this motion, and such further or other material as counsel may advise and the Tribunal may permit.
3. **AND TAKE NOTICE THAT** UCDA requests that this Motion be dealt with in English.
4. **AND TAKE NOTICE THAT** UCDA requests that the documents for this Motion be filed in electronic form.

**THE MOTION IS FOR**

5. The issuance, by this Tribunal, of an order pursuant to section 66 of the *Competition Tribunal Rules* allowing the Applicant to file a confidential version of the Affidavit of Robert G. Beattie sworn June 29, 2011 in support of the application.

**THE GROUNDS FOR THE MOTION ARE:**

6. That UCDA is a private non-profit member-based organization. Information regarding UCDA's net income and UCDA's sales and net income from its Auto Check™ business (the "**Confidential Information**") is confidential to UCDA and is not normally disclosed by UCDA to third parties.
7. Disclosure of the Confidential Information would result in direct harm to UCDA because this information is commercially and competitively sensitive. UCDA's competitors, 3823202 Canada Inc., carrying on business as CarProof, and CARFAX Inc. are participants in the market for vehicle accident searches, which is described in the application, and CarProof is involved in activities which are relevant to the application. Access to UCDA's detailed financial information could allow either or both of these competitors to obtain competitive advantages in the marketplace, potentially resulting in harm to UCDA's competitive position and to the purchasers of vehicle accident searches.

**ORDER SOUGHT:**

8. UCDA respectfully requests that the Tribunal issue a confidentiality order as set out in Appendix A to this Notice of Motion.

Dated at Toronto this 29th day of June, 2011.

On behalf of the Applicant UCDA



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## **Appendix A Draft Confidentiality Order**

FURTHER TO the application filed by the Used Car Dealers Association of Ontario for an Order pursuant to section 103.1 granting leave to make an application under sections 75 and 76 of the *Competition Act*;

AND FURTHER TO the Used Car Dealers Association of Ontario's motion requesting a confidentiality order;

AND FURTHER TO the draft confidentiality order filed by the Used Car Dealers Association on June 29, 2011.

### **THE TRIBUNAL ORDERS THAT:**

1. For the purpose of this order
  - (a) "Document" means any document whether in physical or electronic form, including things defined as "records" in subsection 2(1) of the Act;
  - (b) "Protected Document" means any documents produced in the Proceeding, including documents listed in affidavits of documents, expert reports, pleadings, affidavits, submissions, or lay witness statements and information contained in those documents that a Party claims is confidential and that the Tribunal has determined is confidential;
  - (c) "Parties" means the Applicant and the Respondent, and "Party" means the Applicant or the Respondent;
  - (d) "Proceeding" means the section 103.1 application brought by the Applicant and any proceeding under section 75 or section 76 related thereto.
  
2. Disclosure of Documents containing any of the following types of information could cause specific and direct harm:
  - (a) Financial data and reports; and
  - (b) Confidential financial information relating to UCDA.

3. The confidential version of the affidavit of Robert G. Beattie sworn June 29, 2011 in support of the Proceeding shall be a Protected Document.
4. If information from a Protected Document is incorporated into any other document, that document shall be a Protected Document.
5. Protected Documents will be identified in the following manner for the purpose of this Proceeding:
  - (a) At the time of production of a document, or as soon thereafter as possible, a Party that claims confidentiality over a document shall provide counsel for the other Parties with written notice identifying that document as a Protected Document;
  - (b) All documents designated as Protected Documents shall, on a preliminary basis, be treated as a Protected Document, pending further determination;
  - (c) Following the exchange of documents, the Parties shall use their best efforts to agree as to whether the documents (or portions thereof) are to be treated as Protected Documents;
  - (d) If agreement cannot be reached, the Parties may apply to the Tribunal to determine whether the document, or a portion thereof, is a Protected Document;
6. Subject to a further order of the Tribunal, the consent of the Parties or as required by law, Protected Documents may only be disclosed to the following people, except as required by law: (i) counsel for the Parties and their staff;; and (ii) the Commissioner and the Commissioner's staff.
7. If a Party is required by law to disclose a Protected Document, or if a Party receives written notice from a person who has signed a Confidentiality Undertaking pursuant to this order that they are required by law to disclose a Protected Document, that Party shall give prompt written notice to the Party that claimed confidentiality over the Protected Document so that the Party that claimed confidentiality may seek a protective order or other appropriate remedy.

8. Counsel for a Party and his or her staff, and the Commissioner and her staff may make copies as they require in connection with the Proceeding.
9. Nothing in this order prevents a Party from having full access to Protected Documents that originated from that Party.
10. Parties shall provide the Tribunal with redacted versions of all Protected Documents at the time of filing the Protected Document.
11. At the hearing of the Proceeding
  - (a) Protected documents tendered as evidence at the hearing of the Proceeding shall be identified as such and clearly marked as such;
  - (b) The Tribunal may determine whether the document should be treated as a Protected Document;
  - (c) Protected Documents shall not form part of the public record unless the Party or Parties claiming confidentiality waive the claim, or the Tribunal determines that the document is not a Protected Document.
12. The termination of the Proceeding shall not relieve any person to whom Protected Documents were disclosed pursuant to this order from the obligation of maintaining the confidentiality of such Protected Documents in accordance with the provisions of this order and any confidentiality agreement.
13. Upon completion or final disposition of the Proceeding and any appeals, all Protected Documents and any copies of Protected Documents, with the exception of Protected Documents in the possession of the Commissioner and her staff, shall be destroyed or returned to the Party that produced them unless the Party that produced the Documents states, in writing, that they may be disposed of in some other manner, provided that counsel may keep one set of Protected Documents in their file.
14. This order supersedes and replaces any existing confidentiality agreements between the Parties with respect to material produced in the Proceeding.

15. This order shall be subject to further direction of the Tribunal and may be varied by order of the Tribunal.

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[Presiding Member]