

FILED / PRODUIT

January 20, 2011

CT-2011-001

Chantal Fortin for / pour
REGISTRAR / REGISTRAIRE

OTTAWA, ONT.

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File No.

Registry Document No.

THE 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 Brandon Gray Internet Services Inc. for relief pursuant to sections 75, 103.1 and 104 of the *Competition Act*, R.S.C. 1985, c. C-34, as amended.

B E T W E E N:

BRANDON GRAY INTERNET SERVICES INC.

Applicant

- and -

CANADIAN INTERNET REGISTRATION AUTHORITY also known as AUTORITÉ
CANADIENNE POUR LES ENREGISTREMENTS INTERNET also known as CIRA
also known as ACEI

Respondent

NOTICE OF APPLICATION PURSUANT TO SECTION 103.1 OF THE *COMPETITION ACT* FOR LEAVE TO MAKE APPLICATION UNDER SECTION 75 OF THE *COMPETITION ACT*

TAKE NOTICE THAT:

1. The Applicant, Brandon Gray Internet Services Inc. ("Brandon Gray") hereby applies to the Competition Tribunal pursuant to section 103.1 of the *Competition Act*, R.S.C. 1985, c. C-34, as amended (the "Act"), seeking leave to bring an application for an Order under section 75 of the Act that the Respondent, Canadian Internet Registration Authority also known as Autorité Canadienne pour les Enregistrements Internet also known as CIRA also known as ACEI

("CIRA"), accept and/or continue to accept Brandon Gray as a customer of CIRA on their usual trade terms, forthwith upon issuance of said Order.

AND TAKE NOTICE THAT:

2. The person against whom an Order is sought is the Respondent, CIRA. Its address is:

350 Sparks Street, Suite 306
Ottawa, Ontario
Canada, K1R 7S8

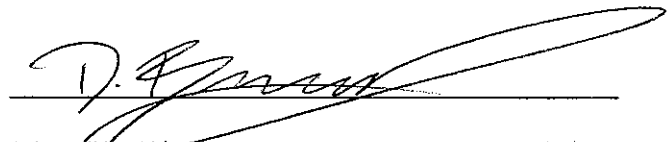
3. If leave is granted, the Applicant will seek an interim order for relief sought in the Application and directions from the Competition Tribunal for an expedited hearing of this Application.

4. The Applicant requests that this Application proceed in English.

5. The Applicant requests that documents be filed in paper form.

6. The Applicant will rely on the Statement of Grounds and Material Facts attached hereto and on the Affidavit of Larry Coker, affirmed on January 13, 2011, and such further and other material as counsel may advise and the Competition Tribunal may permit.

DATED at the City of Vaughan, in the Regional Municipality of York, Province of Ontario, this 13th day of January, 2011.



BRANDON GRAY INTERNET SERVICES INC.
c/o **ROTUNDO DI IORIO QUAGLIETTA, LLP**
Barristers and Solicitors
BDC Building

3901 Highway No. 7, Suite 400
Vaughan, Ontario L4L 8L5

Tel: (905) 264-7800
Fax: (905) 264-7808

Enzo Di Iorio, LSUC# 36681V
David Brand, LSUC #55770B

Lawyers for the Applicant

TO: THE REGISTRAR
THE COMPETITION TRIBUNAL
The Thomas D'Arcy McGee Building
90 Sparks Street, Suite 600
Ottawa, Ontario
K1P 5B4

Tel: (613) 957-7851
Fax: (613) 952-1123

AND TO: MELANIE L. AITKEN
COMMISSIONER OF COMPETITION
50 Victoria Street
Gatineau, Quebec
K1A 0C9

Tel: (819) 997-3301
Fax: (819) 953-5013

AND TO: CANADIAN INTERNET REGISTRATION AUTHORITY
also known as AUTORITÉ CANADIENNE POUR LES
ENREGISTREMENTS INTERNET also known as CIRA
also known as ACEI
350 Sparks Street, Suite 306
Ottawa, Ontario
Canada, K1R 7S8

Tel: (613) 237-5335
Fax: 1-(800) 285-0517

AND TO: BORDEN LADNER GERVAIS LLP
World Exchange Plaza
100 Queen Street, Suite 1100
Ottawa, Ontario
K1P 1J9

Tel: (613) 237-5160
Fax: (613) 230-8842

Peter K. Doody

Lawyers for the Respondent

STATEMENT OF GROUNDS AND MATERIAL FACTS

MATERIAL FACTS

The Parties

1. The Applicant, Brandon Gray, is a corporation duly incorporated pursuant to the laws of the Dominion of Canada maintaining its head office in the Town of Markham, Ontario. Since its incorporation in 2004, Brandon Gray has continuously been in the business of registering, renewing, managing and transferring dot-ca, dot-com, dot-org and other domains on behalf of Registrants (persons, corporations, etc. listed in the internet domain name registration systems as the registrants, or holders, of domain names).

2. The Respondent, CIRA, is a corporation duly incorporated pursuant to the laws of the Dominion of Canada, without share capital, that, among other things, manages the dot-ca domain space, develops and implements domain name policy, accredits Registrars and runs a WHOIS service for dot-ca domains. CIRA is the only entity in Canada that is responsible for the management, administration and overseeing of dot-ca domains. There is therefore no availability of an alternative supply of the dot-ca internet domain name registration system (the "Registry").

Description of the dot-ca Industry

3. A domain name is a name used to identify a computer on the internet. The Domain Name System ("DNS") is a comprehensive directory that connects the names with the numerical

addresses of computers on the internet. The dot-ca is the domain extension used to designate Canadian domain names on the internet.

4. On May 9, 2000, the University of British Columbia and the Government of Canada entered into an Umbrella Agreement which provided that the dot-ca domain space should be developed as a key public resource for social and economic development for all Canadians. In that Umbrella Agreement, the Government of Canada declared that CIRA was designated as the manager of the dot-ca country code top level domains (“ccTLD”). Soon thereafter, on October 10, 2000, the Government of Canada advised the Internet Corporation for Assigned Names and Numbers (“ICANN”) that it had formally designated CIRA as the government’s designee to be the dot-ca delegate.

5. After entering into the Umbrella Agreement, CIRA had developed new policies for administration of the dot-ca ccTLD, which policies consisted of a system for the provision of registration services by numerous competitive Registrars, Canadian Presence Requirements that provide that Registrants and Registrars in the dot-ca ccTLD have a substantial, bona fide connection with Canada, and rules with respect to the registration of dot-ca domain names with CIRA. Every Registrar therefore has to meet with the Canadian Presence Requirements, and if the Registrars have met with these Requirements, they could be certified and re-certified annually as a Registrar.

Brandon Gray’s Admittance and Growth in the dot-ca Industry

6. On or about June 3, 2004, Brandon Gray and CIRA entered into a Registrar Agreement (the “Agreement”). The Agreement authorized Brandon Gray to be certified as a Registrar of the Registry. As a Registrar, Brandon Gray was entitled to, among other things, register dot-ca or

sub-domain names and provide related services on behalf of Registrants and Resellers, the latter of which includes individuals, corporations, trusts, partnerships, etc., that purchase domain names and other internet services, such as webhosting and email hosting, with the intention of reselling them rather than consuming or using them.

7. In order to be certified as a Registrar, every new applicant is asked to complete an expression of interest form, which is later reviewed for validity and accuracy by the Channel Manager of CIRA and its team at CIRA. If the form is valid and accurate, an application would then be sent to the applicant to be completed by that applicant, after which a telephone interview would then be conducted with the applicant. Thereafter, the Channel Manager would make a recommendation and move forward with certification or not. This is the process that every new potential Registrar has to undergo in order to be certified as a Registrar, and this was the process that Brandon Gray had to undertake in order to be certified as a Registrar in 2004.

8. After becoming certified as a Registrar, Brandon Gray then entered into a series of agreements with the Resellers and Registrants. Since 2004, Brandon Gray has been successfully registering, renewing, managing and transferring dot-ca domains on behalf of over 75 Resellers and is now the Registrar for 125,155 domains, for which 3,552 are listed in the Registry.

9. Many of the dot-ca Registrants also have other domains, including dot-com and dot-net domains, which Brandon Gray manages.

10. Brandon Gray's natural geographic market includes all the Canadian provinces. Brandon Gray has spent over six (6) years marketing and developing its client base throughout Canada, and over the years, Brandon Gray has been spending its time simplifying its management system to assist the Resellers and Registrants and to alleviate the burdens of the internet on the Resellers

and Registrants. Brandon Gray's Resellers and Registrants have become familiar with and have come to expect a certain level of expertise and service from Brandon Gray for all of their dot-ca domain needs.

11. Brandon Gray's revenue is solely determined by the number of Resellers and ultimately the services that it provides to the Resellers and Registrants in the Registry.

12. Pursuant to the Agreement, certification as a Registrar is valid for one (1) year; however, over the years, Brandon Gray has been re-certified every year and has had no problems with its re-certification process. The re-certification process has been fairly automatic. Brandon Gray has never had to undergo any burdensome procedure. Besides filing the annual application and paying the required fee, in accordance with the Agreement, Brandon Gray has been re-certified without any difficulty. The parties have always proceeded on the basis that CIRA would not terminate the Agreement unless it had just cause to do so.

13. Pursuant to paragraph 7.6 of the Agreement, CIRA may, in its sole discretion by giving notice thereof to the Registrar, terminate or suspend the Agreement only in specified circumstances, which circumstances consist of the following:

- a) The Registrar fails to meet the Certification Requirements or the Re-certification Requirements, as applicable (including their Canadian Presence Requirements for Registrars) at any time during the Term;
- b) The Registrar provides false or misleading information to CIRA;
- c) There are insufficient funds prepaid by the Registrar in CIRA's Deposit Account to be applied in payment of any Fees;
- d) The Registrar fails to pay when due any amount payable to CIRA under this Agreement;
- e) The Registrar breaches any other term of this Agreement, including, without limitation, any of the Registry PRP or the terms and conditions of the Legal

Notice and fails, in CIRA's reasonable opinion, within five (5) Business Days after the receipt of a notice from CIRA, to remedy such breach;

- f) The Registrar or any partner, director, officer, or controlling shareholder of the Registrar is convicted of an offence under the *Criminal Code* (Canada);
- g) The Registrar or any partner, director, officer, or controlling shareholder of the Registrar engages in any conduct or practice that in the reasonable opinion of CIRA is detrimental or harmful to the good name, Trade-marks (as defined in Section 14.1), goodwill or reputation of CIRA or the Registry, and the Registrar continues, repeats or fails to cease and desist from such conduct, to CIRA's satisfaction, within ten (10) Business Days after CIRA gives notice of such conduct to the Registrar or such additional period as may be stated in the notice;
- h) The Registrar, in its capacity as a Registrant, breaches any agreement with CIRA;
- i) Except as permitted under Section 2.3(3) above, the Registrar requests any transaction with respect to a Domain Name Registration which has not been authorized by the particular Registrant;
- j) The Registrar disrupts or abuses CIRA's Registry services, as determined by CIRA in its sole discretion, acting reasonably;
- k) The Registrar engages in advertising or representations to the public or other behaviour which CIRA, acting reasonably, determines are false, misleading or detrimental to CIRA, the Registry, or any Registrant, registrar, or third party;
- l) Where the Registrar is also a Registrant, the Registrar applies to register a Domain Name as agent for, or on behalf of, a third party in any manner whatsoever which contravenes Section 3.1 (s), (t) or (u) of this Agreement;
- m) Where the Registrar is also a Registrant, the Registrar in its/his/her capacity as a Registrant, breaches Section 3.1(j) of the Registrant Agreement with CIRA;
- n) Where the Registrar is a Member, the Registrar in its/his/her capacity as a Member breaches any Registry PRP applicable to Members; or
- o) The Designation by the government of Canada of CIRA to manage, operate and control the Registry is terminated or CIRA is no longer recognized at the international level as having the exclusive authority to operate the Registry.

CIRA's Refusal to Deal

14. Until recently, Brandon Gray had enjoyed an excellent relationship with CIRA. This changed when, on August 9, 2010, without warning or prior notice, Larry Coker, Senior Systems Administrator of Brandon Gray, received a letter, dated August 6, 2010, from CIRA, advising of

its decision to refuse Brandon Gray's re-certification as a CIRA certified Registrar. Brandon Gray was only given the option of either selling its dot-ca business to another certified Registrar or having its business effectively shut down on the termination date of August 24, 2010. It was only after Brandon Gray's lawyer had written a letter to CIRA on August 10, 2010 indicating that litigation was imminent and that Brandon Gray would be bringing a Motion to request an injunction that CIRA had agreed to extend the termination date to September 7, 2010, which was then extended to September 10, 2010 and further extended to October 31, 2010.

15. Despite repeated attempts by Brandon Gray and its lawyers to confirm the reasons for said termination, CIRA had refused to provide a valid explanation as to why it has made the unilateral decision to cease its relationship with Brandon Gray.

16. In order to prevent CIRA from refusing to supply its product, being the Registry, to Brandon Gray on the termination date of October 31, 2010, Brandon Gray had no choice but to commence an action against CIRA in the Ontario Superior Court of Justice, bearing Court File No. CV-10-0100675-00.

17. Shortly thereafter, Brandon Gray brought a Motion for, *inter alia*, an order immediately compelling CIRA to re-certify Brandon Gray as a Registrar of the Registry and for an interim, interlocutory and permanent injunction prohibiting CIRA and anyone acting on its behalf, without further Court order, from

- (i) directly or indirectly breaching, cancelling, lapsing, forfeiting or surrendering its Registrar Agreement and/or contract with the Plaintiff;

(ii) directly or indirectly refusing and/or failing to re-certify and/or renew the Plaintiff's registration as a Registrar of the Registry; and

(iii) directly or indirectly discontinuing its relationship with Brandon Gray.

18. The Motion was returnable on October 15, 2010, and the Court has not yet released its decision. CIRA has, however, agreed to extend the expiry date of Brandon Gray's certification as a Registrar until the Court has released its decision with respect to the Motion. The Competition Tribunal has the jurisdiction to review the decisions of CIRA and declare that they are restrictive trade practices reviewable by the Competition Tribunal. The injunction sought from the Superior Court of Justice is necessary to enable this Application to be heard by the Competition Tribunal.

19. CIRA has still failed to itemize or communicate any complaints to Brandon Gray, even after it had served its Motion Record on September 9, 2010. CIRA, therefore, failed to provide a valid explanation as to why it has made the decision to cease its relationship with Brandon Gray.

20. In its Motion Record, CIRA suggests that it has received hundreds of complaints regarding the conduct of Internet Registry of Canada ("IROC"), Domain Registry of America ("DROA") and Domain Registry of Canada ("DROC"), but at no point in its materials did CIRA ever mention that these complaints amounted to a breach which ultimately led to CIRA's decision to terminate the Agreement. In fact, until Brandon Gray was served with the Motion Record, CIRA had never advised or notified Brandon Gray that there had been any complaints against Brandon Gray. CIRA even acknowledges that when it receives a complaint about a Registrar, it normally addresses that complaint with the Registrar, by telephone or by email; yet, CIRA has never communicated a single complaint to Brandon Gray.

21. CIRA suggests that Brandon Gray, IROC, DROA and DROC are associated corporations, and that IROC, DROC and DROA were in the past involved in illegal or unethical conduct; however, at no point in time did CIRA ever communicate or converse with Brandon Gray to ask it whether there was an association or an affiliation with these companies. Even if there is, or ever was, an association between Brandon Gray and these corporations, DROC's, DROA's and/or IROC's conduct has nothing to do with Brandon Gray. CIRA has never asked Brandon Gray to not use DROC as a Reseller, and at no point in time did CIRA ever contact Brandon Gray to ask it to disassociate itself with or from DROC or DROA.

22. CIRA not only suggests that Brandon Gray, IROC, DROA and DROC are associated corporations, but alleges that DROC has been soliciting dot-ca holders by sending misleading "renewal notices" to not just holders of domain names in other registries, but to dot-ca holders as well. In the more than six years that Brandon Gray has been certified as a Registrar, CIRA, however, was only able to find in its system one (1) solicitation by Brandon Gray of other dot-ca domain holders.

23. CIRA also suggests that Brandon Gray is not highly respected in the internet community. CIRA's statements are based on a Google internet search containing negative comments relating to Brandon Gray. This is not a reliable source of information. It certainly ought not to be used by CIRA to oust Brandon Gray from its industry. Anyone can write and post comments on the internet, especially competitors. It is, in fact, possible for one person or entity to write hundreds of comments using false names. If Brandon Gray has been referred to in those comments, a Google search would then produce those results.

24. Further, in its Motion Record, CIRA had included a list of complaints. However, most, if not all, of the alleged complaints included in the subject lines are very misleading, as they are very general in nature and do not even provide details relating to the alleged complaints. The allegations with respect to the complaints against DROC are illusory and inaccurate. For instance, CIRA refers to two copies of Renewal Notices; however, the first Renewal Notice was sent to DROC's Customer at the time, which was carried out in strict compliance with CIRA's regulations. The second Renewal Notice was sent to a Customer of DROC's who had, just prior to receiving the notice, transferred to another Registrar. That former Customer did not provide any notice to DROC and as a result, DROC had no way of knowing that the Customer had transferred to another Registrar. DROC has always sent Renewal Notices to its Customers, and only to its Customers, which CIRA knew, or ought to have known.

25. None of the circumstances specified in the Agreement giving CIRA the ability to terminate or suspend the Agreement or its relationship with Brandon Gray were ever present, and at no time, even after serving its Motion Record, or after presenting oral arguments at the Motion, did CIRA provide a valid reason or explanation as to why it has made the unilateral decision to refuse to supply its product to Brandon Gray.

26. At all material times, Brandon Gray has been providing services on behalf of its Resellers and Registrants in accordance with the Agreement and in full compliance with CIRA's rules and regulations. All activities carried out by Brandon Gray in the Registry were performed with no improper purpose. CIRA has, therefore, failed to show any cause as to why it has made the unilateral decision to terminate its relationship with Brandon Gray.

Substantial Detrimental Effect

27. The overall effect of the termination of Brandon Gray's Registrar Agreement by CIRA will be devastating upon Brandon Gray. If CIRA fails to supply Brandon Gray with the Registry, Brandon Gray will be precluded from continuing with its business due to its inability to obtain another Registry.

28. If CIRA terminates its relationship with Brandon Gray, Brandon Gray's employees, Resellers and Registrants will suffer irreparable harm because said termination will shut down Brandon Gray's dot-ca operations, make it impossible for Brandon Gray to operate in its chosen industry, as there is no other Registry available, and will cause severe financial harm to Brandon Gray, its employees, Resellers and Customers.

29. Brandon Gray supplies helpful, reliable and predictable internet services to its Resellers and Registrants, and Brandon Gray has always met each Reseller's and Registrant's needs and/or requirements. Brandon Gray requires the Registry in order to be able to continue to meet these needs and/or requirements. Termination of supply of the Registry by CIRA would create an immediate inability by Brandon Gray to fulfill the needs of its Resellers and Registrants. This would cause immediate damage to the relationships Brandon Gray has built with its Resellers and Registrants over the last six-and-a-half years. More specifically, this would bring about a loss of confidence, a loss of goodwill, a loss of market share and revenue and a loss of Resellers and Registrants.

30. Many of the dot-ca domain Registrants managed by Brandon Gray also have other domains, including dot-com and dot-net domains, which Brandon Gray manages. If CIRA refuses to re-certify Brandon Gray and ultimately terminates its relationship with Brandon Gray,

Brandon Gray will not only lose its dot-ca registrants but many of its other domains because once the dot-ca domain Registrants are transferred to other Registrars, most, if not all, of the other domains would also be transferred to the new Registrars, as the Registrants would not want to have more than one Registrar managing their domains.

31. The effect of CIRA's failure to supply the Registry to Brandon Gray will deal an astounding blow to Brandon Gray's business. If CIRA terminates its relationship with Brandon Gray, Brandon Gray would not only lose its dot-ca Registrants, but it will lose many of its other domains, which will result in Brandon Gray's ouster from this industry. This will shut down Brandon Gray's operations, make it impossible for Brandon Gray to operate in its chosen industry, as there is no other Registry available, and will cause severe financial harm to Brandon Gray, its Resellers, Registrants and employees, for which damages will not be an adequate remedy.

32. Brandon Gray's Resellers and Registrants have become familiar with and have come to expect a certain level of expertise and service from Brandon Gray for all of their dot-ca domain needs and requirements. CIRA's refusal to deal will result in Brandon Gray's being unable to fulfill its ongoing business and professional obligations and relationships with its Resellers and Registrants. CIRA's refusal to deal will, therefore, negatively impact Brandon Gray, its Resellers and Registrants and irreparably harm its customer relationships, its business and its reputation. Even a short interruption of supply by CIRA would lead to irreparable harm for Brandon Gray.

33. Brandon Gray's reputation has already been substantially adversely affected, as prospective Resellers have resorted to using other Registrars instead of Brandon Gray for their

domain services. Brandon Gray credits this shift to using other Registrars directly to Reseller uncertainty resulting from CIRA's refusal to deal with Brandon Gray.

33. If the Registry is no longer available to Brandon Gray, Brandon Gray's Resellers, and ultimately its Registrants, will be notified by CIRA by email of CIRA's intention to transfer their domain names, without their consent, to another Registrar. In light of the level of spam currently propagating in the internet and with users' privacy at risk, however, it is unlikely that the Resellers will receive or read CIRA's notification, and as a result, the Resellers will misguidedly try to continue their business relationships with Brandon Gray, except Brandon Gray will be unable to provide the services that it has been contracted to perform for its former clients.

34. Even if some of the Resellers do read the notification with respect to transferring their domain names, these sudden and unexpected transfers would compel the Resellers to work with new Registrars who they know nothing about and who they may not even trust or want to work with. The Resellers would have very little information as to who will be registering, renewing and managing their domains, even though much, if not most, of their businesses rely upon these domains.

35. As Brandon Gray has spent years simplifying its management system to assist the Resellers and to alleviate the burdens of the internet on the Resellers, the other Registrars may have more convoluted and complex systems, which the Resellers do not need and which systems will most likely confuse the Resellers.

36. Following the transfers, the new Registrars will then provide DNS services to the Resellers and Registrants, so none of the Resellers' and Registrants' existing information will be migrated from Brandon Gray's servers. The Resellers and Registrants will be forced to re-enter

all of their information into a new system, which they will not be familiar with. As a result, the Resellers will have to invest a great deal of time and money in re-entering information into a new system. Following the transfers, there will also be a manual migration of data, which will cause all of the Resellers' and Registrants' sites and emails to go offline. This will undoubtedly cause the Resellers and Registrants a loss of business.

37. Brandon Gray has been competitive in the dot-ca industry for over six (6) years. The result of CIRA's refusal to deal with Brandon Gray will therefore not only have an adverse effect on Brandon Gray, its Resellers and Registrants, but it will have an adverse impact on competition in the market, as the termination of CIRA's relationship with Brandon Gray will result in reduced competition in the dot-ca industry.

38. If CIRA fails to re-certify Brandon Gray and ultimately terminates its relationship with Brandon Gray, Brandon Gray will be substantially affected in its business as it will be precluded from carrying on its business as a result of there being no availability of an alternative supply of the Registry. Accordingly, Brandon Gray will be unable to obtain another supply of the Registry, and as a result, Brandon Gray will be shut out of its industry.

39. Brandon Gray has always met and complied with CIRA's usual trade terms over the past six (6) years that Brandon Gray has been a certified Registrar, and at all material times, Brandon Gray is, and always has been, ready and willing to meet all of CIRA's usual trade terms.

40. There is an ample supply of the Registry available, but that the supply is only available from CIRA.

BASIS FOR APPLICATION PURSUANT TO SECTION 103.1 OF THE ACT

41. The test for granting leave under section 103.1 of the Act is set out in subsection 103.1(7), as follows:

"The Tribunal may grant leave to make an application under section 75 or 77 if it has reason to believe that the applicant is directly and substantially affected in the applicants' business by any practice referred to in one of those sections that could be subject to an order under that section."

42. In this application, Brandon Gray seeks leave to bring an application for an order pursuant to section 75 of the Act, which states as follows:

"(1) Where, on application by the Commissioner or a person granted leave under section 103.1, the Tribunal finds that

(a) a person is substantially affected in his business or is precluded from carrying on business due to his inability to obtain adequate supplies of a product anywhere in a market on usual trade terms,

(b) the person referred to in paragraph (a) is unable to obtain adequate supplies of the product because of insufficient competition among suppliers of the product in the market,

(c) the person referred to in paragraph (a) is willing and able to meet the usual trade terms of the supplier or suppliers of the product,

(d) the product is in ample supply, and

(e) the refusal to deal is having or is likely to have an adverse effect on competition in a market,

the Tribunal may order that one or more suppliers of the product in the market accept the person as a customer within a specified time on usual trade terms unless, within the specified time, in the case of an article, any customs duties on the article are removed, reduced or remitted and the effect of the removal, reduction or remission is to place the person on an equal footing with other persons who are able to obtain adequate supplies of the article in Canada.

When article is a separate product

(2) For the purposes of this section, an article is not a separate product in a market only because it is differentiated from other articles in its class by a trade-mark, proprietary name or the like, unless the article so differentiated occupies such a dominant position in that market as to substantially affect the ability of a person to carry on business in that class of articles unless that person has access to the article so differentiated.

Definition of "trade terms"

(3) For the purposes of this section, the expression “trade terms” means terms in respect of payment, units of purchase and reasonable technical and servicing requirements.

Inferences

(4) In considering an application by a person granted leave under section 103.1, the Tribunal may not draw any inference from the fact that the Commissioner has or has not taken any action in respect of the matter raised by the application.

43. In *Barcode Systems Inc. v. Symbol Technologies Canada ULC*, [2004] C.C.T.D. No. 1 (“*Barcode*”), at paragraph 17, the Competition Tribunal held that:

“[t]he threshold for an applicant obtaining leave [under section 103.1(7)] is not a difficult one to meet. It need only provide sufficient credible evidence of what is alleged to give rise to a bona fide belief by the Tribunal. This is a lower standard of proof than proof on a balance of probabilities which will be the standard applicable to the decision on the merits.”

44. Further, in *Barcode*, at paragraph 8, the Competition Tribunal held that the Competition Tribunal is not required to have reason to believe that the refusal to deal has or is likely to have an adverse effect on competition in a market at the leave stage.

45. In *National Capital News Canada v. Canada (Speaker, House of Commons)*, [2002] C.C.T.D. No. 38 at paragraph 14, the Competition Tribunal set out the following test that must be met before leave under section 103.1(7) of the Act is granted:

“...the appropriate standard under the subsection 103.1(7) is whether the leave application is supported by sufficient credible evidence to give rise to a bona fide belief that the applicant may have been directly and substantially affected in the applicant's business by a reviewable practice, and that the practice in question should be subject to an order..”

46. The evidence on this Application demonstrates that:

- i) CIRA is the exclusive supplier of the Registry in Canada, and that CIRA has informed Brandon Gray that it will not be re-certifying Brandon Gray as a Registrar; as a result, Brandon Gray's dot-ca business is directly and substantially affected by CIRA's conduct;
- ii) if CIRA fails to re-certify Brandon Gray and ultimately terminates its relationship with Brandon Gray, Brandon Gray's business will be substantially affected because it will be precluded from carrying on its business as a result of there being no availability of an alternative supply of the Registry. Accordingly, Brandon Gray will be unable to obtain another supply of the Registry, and as a result, Brandon Gray will be shut out of its industry;
- iii) there is an ample supply of the Registry available, but that the supply is only available from CIRA;
- iv) Brandon Gray is, and at all material times was, willing and able to meet CIRA's usual trade terms. Brandon Gray has always been in full compliance with CIRA's rules and regulations, and at no point in time did Brandon Gray ever breach those rules and regulations;
- v) as Brandon Gray has over 25 Resellers and over 3,500 Registrants, CIRA's refusal to re-certify Brandon Gray will undoubtedly have an adverse effect on

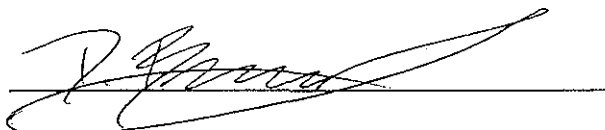
competition in the dot-ca internet industry; and

- vi) CIRA's practice meets all the statutory elements of reviewable practice with respect to which Brandon Gray is seeking leave.

47. CIRA's actions in refusing to deal with Brandon Gray are activities described in section 75 of the Act, and it is appropriate in all the circumstances that the Competition Tribunal order CIRA to accept and/or to continue to accept Brandon Gray as a customer of CIRA on their usual trade terms.

48. Brandon Gray relies upon the Affidavit of Larry Coker, affirmed January 13, 2011.

DATED at the City of Vaughan, in the Regional Municipality of York, Province of Ontario, this 13th day of January, 2011.



BRANDON GRAY INTERNET SERVICES INC.
c/o ROTUNDO DI IORIO QUAGLIETTA, LLP
Barristers and Solicitors
BDC Building
3901 Highway No. 7, Suite 400
Vaughan, Ontario L4L 8L5

Tel: (905) 264-7800

Fax: (905) 264-7808

Enzo Di Iorio, LSUC# 36681V

David Brand, LSUC #55770B

Lawyers for the Applicant

Applicant

File No.
Registry Document No.**THE COMPETITION TRIBUNAL****IN THE MATTER OF** the *Competition Act*,
R.S.C. 1985, c. C-34, as amended.**AND IN THE MATTER OF** an
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and 104 of the *Competition Act*, R.S.C. 1985, c.
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FOR LEAVE TO MAKE APPLICATION
UNDER SECTION 75 OF THE
*COMPETITION ACT*****ROTUNDO DI IORIO QUAGLIETTA, LLP**

Barristers and Solicitors

BDC Building

3901 Highway #7

Suite 400

Vaughan, Ontario L4L 8L5

Tel: (905) 264-7800

Fax: (905) 264-7808

Enzo Di Iorio (LSUC No. 36681V)**David Brand (LSUC No. 55770B)**

Lawyers for the Applicant