

Competition Tribunal



Tribunal de la Concurrence

Reference: *Swenson Inc. v. Trader Corporation*, 2008 Comp. Trib. 20  
File No.: CT-2008-007  
Registry Document No.: 18

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

AND IN THE MATTER of an Application by Swenson Inc. for an order pursuant to section 103.1 of the *Competition Act* granting leave to make application under section 75 of the *Competition Act*;

B E T W E E N:

**Swenson Inc.**  
(applicant)

and

**Trader Corporation**  
(respondent)



Decided on the basis of the written record  
Presiding Judicial Member: Simpson J. (Chairperson)  
Date of Order: August 8, 2008  
Order signed by: Madam Justice Sandra J. Simpson

**ORDER DISMISSING WITHOUT PREJUDICE THE APPLICATION FOR LEAVE  
PURSUANT TO SECTION 103.1 OF THE COMPETITION ACT**

[1] **FURTHER TO** a notice of application filed by Swenson Inc. (the “Applicant”) on July 16, 2008, for an order pursuant to section 103.1 of the *Competition Act*, R.S.C. 1985, c. C-34, as amended (the “Act”), granting leave to make an application under section 75 of the Act;

[2] **AND FURTHER TO** a motion, on consent, made by the respondent for an order extending the time to file its response pursuant to Rule 119 of the *Competition Tribunal Rules*, SOR/2008-141 (the “Rules”) to within 10 days of receiving the transcript of the cross-examination of the Applicant’s affiant. The Applicant had consented to the cross-examination of the affiant;

[3] **AND UPON** being advised that the deponent of the Applicant’s affidavit is on vacation and cannot be reached to provide instructions about when he might be cross-examined;

[4] **AND UPON** being advised that no date can be set for the filing of the response, which is dependent on the date of cross-examination, because counsel do not know when the cross-examination of the Applicant’s affiant can be scheduled and transcripts obtained;

[5] **AND UPON** noting that the Tribunal suggested October 31st, 2008 as a date for the response but counsel for the parties were not prepared to agree given their inability to set a date for the cross-examination of the Applicant’s affiant;

[6] **AND UPON** concluding that the Tribunal is not prepared, even on consent, to grant an open ended adjournment for the filing of the response which was due today;

[7] **AND UPON** determining that it is not appropriate for an applicant to file an application for leave at a time when there is no prospect of moving the matter forward in a reasonable time frame;

**NOW THEREFORE THE TRIBUNAL ORDERS THAT:**

[8] The application for leave is hereby dismissed without prejudice to the Applicant to re-file when it is ready to proceed.

DATED at Ottawa, this 8<sup>th</sup> day of August 2008.

SIGNED on behalf of the Tribunal by the Chairperson.

(s) Sandra J. Simpson

**COUNSEL:**

For the applicant

Swenson Inc.

William G. Haight

For the respondent

Trader Corporation

Neil Finkelstein

Brian Facey

Catherine Beagan Flood

Rahat Godil