

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 Swenson Inc. for an order pursuant to section 103.1 of the *Competition Act*, R.S.C. 1985, c. C-34, as amended, granting leave to make an application under section 75 of the *Competition Act*, R.S.C. 1985, c. C-34, as amended;

BETWEEN:

SWENSON INC.

Applicant
(Respondent on the Motion)

- and -

TRADER CORPORATION

Respondent
(Moving Party)

COMPETITION TRIBUNAL TRIBUNAL DE LA CONCURRENCE FILED / PRODUIT August 1, 2008 CT- 2008-007 Chantal Fortin for / pour REGISTRAR / REGISTRAIRE	
OTTAWA, ONT.	# 0015

AFFIDAVIT OF KATHRYN LESTER
(sworn August 1, 2008)

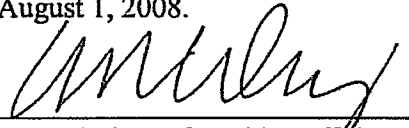
I, KATHRYN LESTER, of the City of Toronto, in the Province of Ontario, SWEAR
THAT:

1. I am a legal secretary with the law firm of Blake, Cassels & Graydon LLP, solicitors for the respondent (moving party), Trader Corporation ("Trader"). As such, I have personal knowledge of the matters deposed to herein, except where otherwise indicated to be on the basis of my information and belief. Where I have indicated that my knowledge is based on my information and belief, I believe that information to be true.

2. On July 16, 2008, the Applicants filed a Notice of Application and the Affidavit of Darold Swenson pursuant to section 103.1 of the *Competition Act* (the "Act"), seeking leave to bring an application for an order under subsection 75(1) of the Act directing the Respondent Trader to supply advertising space in its publications on usual trade terms (the "Application")

3. On July 24, 2008, the Competition Tribunal (the "Tribunal") confirmed that it can hear the Applicant's Application for leave to make an application under subsection 75(1) of the Act.
4. The Tribunal's Notice was served on Trader on Thursday, July 24, 2008.
5. On July 28, 2008, Catherine Beagan Flood, of counsel for the Respondent, wrote to William Haight, of counsel for the Applicant, advising that the Respondent intends to cross-examine Mr. Swenson on his affidavit sworn on July 10, 2008. A copy of this email and the responses from Mr. Haight dated July 28 and 30, 2008 are attached as Exhibit "A" to this affidavit.

SWORN BEFORE ME at the City of
Toronto, in the Province of Ontario, on
August 1, 2008.



Commissioner for taking affidavits
ROBIN D. URLEY



Kathryn Lester

This is Exhibit A referred to in
the Affidavit of Kathryn
Lester

Sworn before me this 1st day of

August 2008



A COMMISSIONER, ETC.

BEAGAN FLOOD, CATHY

From: Bill Haight [haight@dehslaw.com]
Sent: Wednesday, July 30, 2008 5:58 PM
To: BEAGAN FLOOD, CATHY
Cc: bjornson@dehslaw.com

Subject: Re: Swenson Inc. v. Trader Corporation, Competition Tribunal File No. CT-2008-007

Cathy;

This is to confirm our telephone conversation of yesterday.

Your request for documentation has been provided to our client. It will endeavour to provide what is available.

In regard to your request to cross-examine Mr. Swenson, he is currently on an RV trip through Alaska and is not expected to return until early to mid September. I was able to speak to him today but phone reception may not be reliable.

In the circumstances I believe that you are entitled to an extension of time in which to provide your client's response. I am prepared to consent to a reasonable extension and I confirm that you and I have discussed tentative dates for the cross-exam of Sept. 22, 23 or 29.

I will over the next few days attempt to determine Mr. Swenson's availability on those dates. Upon agreeing to cross-exam dates and completing those exams it seems that you should be able to provide your client's response within 10 days after receipt of transcripts. Please advise.

I confirm that the cross-exams will be held in Winnipeg. However, Mr. Swenson lives in Minot North Dakota which is a long drive. We will be seeking reasonable attendance money.

Bill Haight

— Original Message —

From: BEAGAN FLOOD, CATHY

To: Bill Haight

Cc: bjornson@dehslaw.com

Sent: Monday, July 28, 2008 5:56 PM

Subject: RE: Swenson Inc. v. Trader Corporation, Competition Tribunal File No. CT-2008-007

Mr. Haight,

Trader does not intend to file any affidavit material.

Cathy Beagan Flood
Partner | Blakes
Direct: 416.863.2269

From: Bill Haight, [mailto:haight@dehslaw.com]

Sent: Monday, July 28, 2008 6:09 PM

To: BEAGAN FLOOD, CATHY

Cc: bjornson@dehslaw.com

Subject: Re: Swenson Inc. v. Trader Corporation, Competition Tribunal File No. CT-2008-007

Ms. Beagan Flood;

Before we talk about cross-exams, is your client intending on filing any affidavit material? I would like to hear from you on that. At the same time I will check into my client's availability.

Bill Haight

8/1/2008

— Original Message —

From: BEAGAN FLOOD, CATHY

To: haight@dehslaw.com

Sent: Monday, July 28, 2008 4:50 PM

Subject: Swenson Inc. v. Trader Corporation, Competition Tribunal File No. CT-2008-007

Mr. Haight,

As you will have seen from my email earlier this afternoon acknowledging service of the Notice in the above-noted matter, Trader Corporation has retained us to represent them.

We wish to cross-examine the Applicant's affiant, Mr. Swenson. I am available any day this week or Tuesday or Wednesday of next week to do so. While Toronto or Ottawa would be more convenient for us, I am prepared to travel to Winnipeg to conduct the cross-examination.

Please be advised that pursuant to Rule 91(2)(c) of the Federal Court Rules, we intend to direct Mr. Swenson to produce the following categories of documents for inspection at the examination:

- 1) a list or catalog of all products or services, other than recreational vehicles, that the Applicant offers;
- 2) all advertisements, with the advertising publication, the location of the publication and the date of the publication clearly identified, placed by the Applicant in the United States or Western Canada within the last year, and in particular from the first week of April 2008 to the present;
- 3) all documents relating to the cost of advertising spending, by advertising publication and by month, by the Applicant in the United States or Western Canada within the last year, and in particular from the first week of April 2008 to the present; and
- 4) the documents which set out the sales forecasts in support of Mr. Swenson's statement at paragraph 6 of his affidavit that he expects a business loss of 40% for 2008, and all supporting documents for such forecasts, including, in particular, the documents that set out the assumptions underlying those forecasts.

We also intend to bring a motion for an extension of time to file the response.

Could you please advise me, as soon as possible, of Mr. Swenson's availability and whether you are prepared to consent to the motion to extend time.

Cathy Beagan Flood
Partner | Blakes
Direct: 416.863.2269

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SWENSON INC.
Applicant

and

TRADER CORPORATION
Respondent

CT-2008-007

COMPETITION TRIBUNAL

**AFFIDAVIT OF
KATHRYN LESTER**

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Solicitors for the Respondent
(Moving Party)