

Competition Tribunal

File No.:

CT - 2008 - 007

Registry Document No.:

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

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

BETWEEN:

SWENSON INC.,

APPLICANT

AND

TRADER CORPORATION,

RESPONDENT

NOTICE OF APPLICATION PURSUANT TO SECTION 75

OF THE COMPETITION ACT

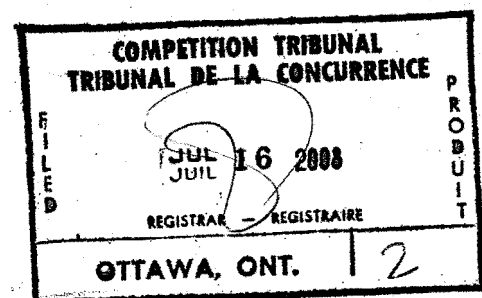
TAKE NOTICE THAT:

1. The Applicant, Swenson Inc., will make an application to the Competition Tribunal pursuant to section 75 of the *Competition Act*, R.S.C. 1985, c. C-34, (the "Act") for an order under subsection 75(1) of the Act directing the Respondent, Trader Corporation, to supply advertising space in its publications on usual trade terms;

AND TAKE NOTICE THAT:

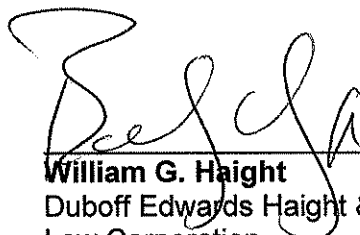
2. The person against whom the orders are sought is the Respondent, Trader Corporation. The address of Trader Corporation is:

Trader Corporation
11638-142nd Street
Edmonton, Alberta
T5M 1V4



3. Swenson Inc. will rely on the Statement of Grounds and Material Facts attached hereto and on the Affidavit of Darold Swenson duly sworn on July 10, 2008.
4. If leave is granted, Swenson Inc. will seek an interim order from the Competition Tribunal for the relief sought in this Application and directions from the Tribunal for an expedited hearing of this Application.
5. The Applicant requests that this application proceed in English.
6. The Applicant requests that documents be filed in electronic form.

DATED at Winnipeg, Manitoba, this 11th day of July, 2008.



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TO: **The Registrar Competition Tribunal**
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90 Sparks Street, Suite 600
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Tel: 613-954-0857
Fax: 613-952-1123

AND TO: **Commissioner of Competition**
50 Victoria Street
Gatineau, Quebec
K1A 0C9
Tel: 819-997-3301
Fax: 819-997-0324

AND TO: Trader Corporation
11638-142nd Street
Edmonton, Alberta
T5M 1V4
Tel: 780-415-6800
Fax: 780-453-1297

AND TO: Trader Corporation
Head Office
16 Place Du Commerce
Ile-Des-Soeurs, Quebec
H3E 2A5
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STATEMENT OF GROUNDS AND MATERIAL FACTS

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MATERIAL FACTS:*The Parties*

1. The Applicant, Swenson Inc., is a corporation duly incorporated under the laws of the State of North Dakota. It has its head office in Minot, North Dakota, USA.
2. The Respondent, Trader Corporation, is a federal corporation incorporated pursuant to the laws of the Canada, its registered office at 16 Place du Commerce, Ile-Des-Soeurs, Quebec, Canada.

Description of Industry

3. The sale of new and used Recreational Vehicles ("RV's") in the trade area which encompasses the United States and the western provinces of Canada (the "Trade Area").

Swenson Inc.

4. Swenson Inc. was established in 1992 and has been operated since that time by the Swenson family as a successful RV dealer business in the Trade Area.
5. Swenson Inc. sells new and used RV's and related equipment exclusively throughout the Trade Area.
6. The products and services Swenson Inc. offers its customers, together with its reputation within the Trade Area, have created a long standing goodwill.

Trader Corporation

7. Trader Corporation is the Canadian publisher of the Trader publications, specifically the Bike, Boat & RV Trader (the "RV Trader"), its office located at 11638-142nd Street, Edmonton, Alberta, T5M 1V4.

8. The RV Trader is the single largest and most dominant advertiser of new and used RV's in the Trade Area and its reputation for the quality of its advertisements and its circulation are unsurpassed by any other publication within the Trade Area.

Trader Corporation's Refusal to Deal

9. Swenson Inc. has been purchasing advertising space in the Trader Corporation publications since 1991, and specifically the RV Trader publication, beginning on or about April 2006.
10. Swenson Inc. had, until Trader Corporation's recent refusal to deal with Swenson Inc., bought advertising space from Trader Corporation on a regular and seasonal basis.
11. In or about the first week of April, 2008, Swenson Inc. attempted to purchase advertising in the RV Trader publication. Trader Corporation refused to provide its advertising product to Swenson Inc., claiming that it had no product available.
12. Over the course of the past 3 years, Swenson Inc. has developed a significant market for its new and used RV's and related products within the Canadian western provinces portion of the Trade Area, which it attributes, in large part, to the advertising space it has continuously purchased from Trader Corporation
13. Throughout their business relationship, Swenson Inc. has kept its account with Trader Corporation current and, until its refusal to deal, Trader Corporation has never expressed to Swenson Inc. a concern regarding the sale of advertising space to Swenson Inc.
14. Trader Corporation and Swenson Inc. have enjoyed a long and mutually prosperous relationship and Swenson Inc. claims a loyalty to the Trader Corporation publications that can not be disputed.
15. Swenson Inc. continues to be willing and able to meet the usual trade terms with respect to the purchase of advertising space from Trader Corporation.

16. It is the belief of Swenson Inc. that the position taken by Trader Corporation was a response by Trader Corporation to the increase in RV sales from the United States into the western provinces of Canada.
17. It has been common practice in the Trade Area that the Canadian and American RV dealers compete in a competitive and reasonably level marketplace. However, since the recent rise in the value of the Canadian Dollar with respect to the American Dollar, the marketplace for RV sales has experienced a shift.
18. The price and selection offered for RV products by the American RV dealers have now become more competitive in the Trade Area than the price and selection offered by Canadian RV dealers.
19. As a result of a comment made by a representative of Trader Corporation to Mr. Darold Swenson, President of Swenson Inc., it is the belief of Swenson Inc. that, due to pressure from its Canadian advertisers, Trader Corporation has established a practice to refuse to deal with American advertisers of RV products.
20. Swenson Inc. has been competitive in the Trade Area for many years and the restriction by Trader Corporation to deal with Swenson Inc. has substantially affected the business of Swenson Inc.
21. As a result of Trader Corporation's refusal to deal with Swenson Inc., it has been unable to obtain the essential advertising product from Trader Corporation
22. The unique and wide circulation of the RV trader publications and the insufficient competition in the Trade Area with respect to RV advertising prevents Swenson Inc. from obtaining adequate advertising space anywhere else in the Trade Area.

Effect on Swenson Inc.'s Business

23. The Trader Corporation publications occupy a dominant position in the Trade Area and its refusal to supply its product to Swenson Inc. significantly and adversely affects Swenson Inc's business.

24. After Trader Corporation's refusal to supply Swenson Inc. with advertising space in its RV Trader publication, Swenson Inc.'s gross profits from Canadian sales of RV's dropped or is expected to drop over the course of 2008 by 40%.
25. It is the position of Swenson Inc. that its decline in sales within the Trade Area demonstrates the substantial effect of Trader Corporation's refusal to provide its advertising product to Swenson Inc.

BASIS FOR APPLICATION:

Pursuant to Section 103.1 of the Act

26. 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."

27. In *National Capital News Canada v. Milliken*, (2002) 23 C.P.R. (4th) 77, the Competition Tribunal defined the test which must be met before leave under section 103.1 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."

28. This test is clearly satisfied in this Application, as the following points are unequivocally established on the evidence before the Tribunal:

- a. Trader Corporation engaged in a reviewable practice, namely a refusal to deal under section 75 of the Act; and
- b. Svenson Inc.'s business is directly and substantially affected by Trader Corporation's refusal to deal with it.

Pursuant to Section 75(1) of the Act

29. In this application, Swenson Inc. seeks leave to bring an application for an order pursuant to section 75(1) 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:
1. 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.
 2. 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,
 3. 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,
 4. the product is in ample supply, and
 5. 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."

30. Swenson Inc. is seeking an order under subsection 75(1) of the Act directing the Respondent, Trader Corporation, to supply advertising space in its publications on usual trade terms.

North American Free Trade Agreement

31. The Canadian and US governments entered into an "Agreement between the Government of Canada and the Government of the United States of America Regarding the Application of Their Competition and Deceptive Marketing Practices Laws" (the "Agreement"), having regard to the countries close economic relations and cooperation within the framework of the North American Free Trade Agreement.
32. Specifically, Article V of the Agreement provides that:
- "1. The Parties note that anticompetitive activities may occur within the territory of one Party that, in addition to violating that Party's competition laws, adversely affect important interests of the other Party. The Parties agree that it is in their common interest to seek relief against anticompetitive activities of this nature.
2. If a Party believes that anticompetitive activities carried out in the territory of the other Party adversely affect its important interests, the first Party may request that the other Party's competition authorities initiate appropriate enforcement activities."
33. The actions of Trader Corporation in refusing to deal with Svenson Inc. clearly falls within the scope of activity prescribed by Section 75 of the Act and clearly amounts to a practice which, at the very least, could be subject to an Order under that section.

DATED at the City of Winnipeg, in the Province of Manitoba, this 11th day of July, 2008.

**I hereby certify this to be a true copy of the original document/
Je certifie par la présente que ceci est une copie conforme au document original**

Dated this / Fait ce July 15, 2008

Chantal Fortin

**For Registrar, Competition Tribunal /
Pour Registraire, Tribunal de la concurrence**


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