

COMPETITION TRIBUNAL  
TRIBUNAL DE LA CONCURRENCE

**FILED / PRODUIT**

June 11, 2008

CT-2008-006

Chantal Fortin for / pour  
REGISTRAR / REGISTRAIRE

OTTAWA, ONT.

# 0039

File No.: CT- 2008-006  
Registry Document No.:

**COMPETITION TRIBUNAL**

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

**IN THE MATTER OF** an application by the Canadian Standard Travel Agent Registry, doing business as CSTAR, for an order pursuant to section 103.1 granting leave to make application under section 75 of the *Competition Act*;

**AND IN THE MATTER OF** an application by the Canadian Standard Travel Agent Registry, doing business as CSTAR for an order pursuant to rule 312 of the *Federal Courts Rules* and rule 34(1) of the *Competition Tribunal Rules* granting leave to file a supplementary affidavit in support of the application pursuant to section 103.1 granting leave to make an application under section 75 of the *Competition Act*.

BETWEEN:

**CANADIAN STANDARD TRAVEL AGENT REGISTRY  
doing business as CSTAR**

Applicant

AND

**INTERNATIONAL AIR TRANSPORT ASSOCIATION  
doing business as IATA**

Respondent

**AFFIDAVIT OF SAMANTHA TROTTOLA  
Sworn June 10, 2008**

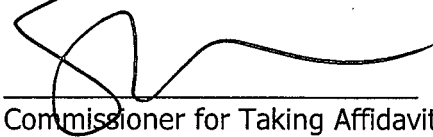
I, SAMANTHA TROTTOLA, of the City of Toronto, in the Province of Ontario,  
MAKE OATH AND SAY AS FOLLOWS:

1. I am a law clerk with the firm Gilbert's LLP, solicitors for the Applicant in this action and as such have knowledge of the facts to which I hereinafter depose.
2. I make this affidavit in support of the Applicant's motion for an order pursuant to Rule 312 of the *Federal Courts Rules* and rule 34(1) of *the Competition Tribunal Rules* granting leave to file a supplementary affidavit in support of the application pursuant to Section 103.1 granting leave to make an application under Section 75 of the *Competition Act*.
3. Attached as Exhibit "A" to my affidavit is an email from Nawel Bailey of our office to Martin Low of McMillan LLP dated June 5, 2007.
4. Attached as Exhibit "B" to my affidavit is an email from Martin Low to Nawel Bailey dated June 5, 2008.
5. Attached as Exhibit "C" to my affidavit is an email from Nawel Bailey to Martin Low dated June 5, 2008.
6. I have been informed by Nawel Bailey, and I verily believe, that Gilbert's LLP will make the Applicant available for cross-examination on the supplementary affidavit if so requested by the Respondent. I have also been informed by Nawel Bailey, and I verily believe, that Gilbert's LLP is prepared to consent to a reasonable extension of the

Respondents 15-day response period as provided for in s. 119(1) of the Competition  
Tribunal Rules.

**SWORN BEFORE ME**

in the City of Toronto, in the  
province of Ontario,  
This 10<sup>th</sup> day of June, 2008

  
\_\_\_\_\_  
Commissioner for Taking Affidavits

*Sharonagh McVean*



\_\_\_\_\_  
SAMANTHA TROTTOLA

THIS IS EXHIBIT "A" REFERRED TO IN THE  
AFFIDAVIT OF SAMANTHA TROTTOLA  
SWORN BEFORE ME THIS 8<sup>th</sup> DAY  
OF JUNE, 2008. *W. J. [unclear]*



A Commissioner, etc.

## Samantha Trottola

---

**From:** Nawel Bailey  
**Sent:** Thursday, June 05, 2008 4:04 PM  
**To:** Tim Gilbert; Alex Stack; Salim Dharssi  
**Subject:** FW: Cross-Exam of B. Bishins

See msg to Martin below.

Nawel Bailey  
GILBERT'S LLP  
Lawyers | Patent and Trademark Agents  
The Flatiron Building  
49 Wellington Street East  
Toronto, ON M5E 1C9  
T: 416.703.1100  
F: 416.703.7422  
nawel@gilbertslaw.ca

---

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**From:** Nawel Bailey  
**Sent:** Thursday, June 05, 2008 4:04 PM  
**To:** 'Martin Low'  
**Subject:** Cross-Exam of B. Bishins

Hi Martin,

I left a voicemail for you, but in case you haven't received it – we have decided to file a supplemental affidavit with additional evidence for Mr. Bishins. Accordingly, we thought you may want to push back cross-examining Mr. Bishins until you have the additional materials. I would be grateful if you could let me know, and we can then discuss our expected filing date for the new material, and schedule a new date for the cross examinations. I am happy to write the court and let them know of the change in schedule if this is how you would like to proceed.

Please give me or Alex Stack a call to discuss.

Thanks,

Nawel

Nawel Bailey  
GILBERT'S LLP  
Lawyers | Patent and Trademark Agents  
The Flatiron Building  
49 Wellington Street East  
Toronto, ON M5E 1C9  
T: 416.703.1100  
F: 416.703.7422  
nawel@gilbertslaw.ca

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6/9/2008

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**From:** Martin Low [mailto:Martin.Low@mcmillan.ca]  
**Sent:** Monday, June 02, 2008 1:58 PM  
**To:** Nawel Bailey  
**Cc:** Tim Gilbert; Alex Stack; David Kent; Eric Vallieres  
**Subject:** Re: Cross-Exam of B. Bishins

Thanks Nawel. I expect we'll need until noon on Friday, and we will arrange for expedited transcripts.

Martin  
D. Martin Low  
t 416.865.7100  
f 416.865.7048  
martin.low@mcmillan.ca

McMillan LLP  
Brookfield Place, 181 Bay Street, Suite 4400  
Toronto, Ontario M5J 2T3

[www.mcmillan.ca](http://www.mcmillan.ca)

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----- Original Message -----

From: Nawel Bailey <nawel@gilbertslaw.ca>  
To: Martin Low  
Cc: Tim Gilbert <tim@gilbertslaw.ca>; Alex Stack <alex@gilbertslaw.ca>  
Sent: Mon Jun 02 11:52:38 2008  
Subject: Cross-Exam of B. Bishins

Martin,

9:30am at your offices to cross examine Mr. Bishins will be fine. Could you please provide an estimate of the amount of time you anticipate needing?

Thanks,

Nawel

Nawel Bailey  
GILBERT'S LLP

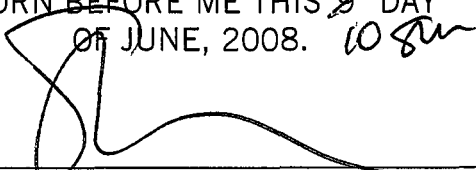
Lawyers | Patent and Trademark Agents

6/9/2008

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THIS IS EXHIBIT "B" REFERRED TO IN THE  
AFFIDAVIT OF SAMANTHA TROTTOLA  
SWORN BEFORE ME THIS 8<sup>th</sup> DAY  
OF JUNE, 2008. *10 SW*



---

A Commissioner, etc.



**Samantha Trottola**

---

**From:** Nawel Bailey  
**Sent:** Monday, June 09, 2008 2:30 PM  
**To:** Samantha Trottola  
**Subject:** FW: Cross-Exam of B. Bishins

Nawel Bailey  
GILBERT'S LLP  
Lawyers | Patent and Trademark Agents  
The Flatiron Building  
49 Wellington Street East  
Toronto, ON M5E 1C9  
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F: 416.703.7422  
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---

**From:** Martin Low [mailto:Martin.Low@mcmillan.ca]  
**Sent:** Thursday, June 05, 2008 4:59 PM  
**To:** Nawel Bailey  
**Cc:** David Kent; Eric Vallieres; Jonathan Hood  
**Subject:** RE: Cross-Exam of B. Bishins

Nawel, thanks for your message, below.

First, as you are aware, you have no right to file a "supplementary" affidavit. Part 8 of the Rules is a complete code for motions under section 103.1 of the Act. Rule 115 makes it clear that the affidavit(s) in support of an application are to be filed with the application and the Rules do not contemplate serial filings by the applicant. The s. 103.1 application is supposed to be a simple and streamlined gatekeeping proceeding.

Second, the service of the application (including affidavit) triggers the respondent's statutory 15 day response period. We are not satisfied that this is a period that the Tribunal can extend. You are not entitled to interfere with our response period by filing late affidavits.

Third, we all attended on the telephone conference on Monday when a schedule was set by Justice Simpson. There was no mention of supplementary affidavits. It is too late now, having failed to raise the matter with Justice Simpson (all apart from the absence of any entitlement under the Rules), to unilaterally file new material and change that timetable.

Accordingly, we intend to proceed tomorrow as discussed and approved by Justice Simpson. If you intend to act otherwise, I expect that you will first seek the necessary leave of the Tribunal to do so.

Finally, you will understand that we will rely on this exchange of emails if the circumstances require.

  
**D. Martin Low, Q.C.**  
Partner  
t 416.865.7100  
f 416.865.7048  
martin.low@mcmillan.ca

McMillan LLP  
Brookfield Place, 181 Bay Street, Suite 4400  
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**Sent:** Thursday, June 05, 2008 4:04 PM  
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Please give me or Alex Stack a call to discuss.

Thanks,

Nawel

Nawel Bailey  
GILBERT'S LLP  
Lawyers | Patent and Trademark Agents  
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49 Wellington Street East  
Toronto, ON M5E 1C9  
T: 416.703.1100  
F: 416.703.7422  
nawel@gilbertslaw.ca

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**Subject:** Re: Cross-Exam of B. Bishins

Thanks Nawel. I expect we'll need until noon on Friday, and we will arrange for expedited transcripts.

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f 416.865.7048  
martin.low@mcmillan.ca

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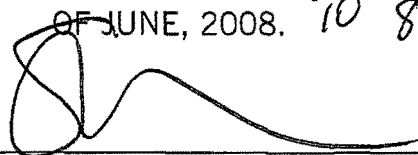
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THIS IS EXHIBIT "C" REFERRED TO IN THE  
AFFIDAVIT OF SAMANTHA TROTTOLA  
SWORN BEFORE ME THIS 9<sup>th</sup> DAY  
OF JUNE, 2008. 10 8m

A handwritten signature in black ink, consisting of a large, stylized initial 'S' followed by a long, sweeping horizontal line that tapers to the right.

---

A Commissioner, etc.

**Samantha Trotola**

---

**From:** Nawel Bailey  
**Sent:** Thursday, June 05, 2008 6:05 PM  
**To:** martin.low@mcmillan.ca  
**Cc:** Tim Gilbert; Alex Stack; Salim Dharssi  
**Subject:** FW: Cross-Exam of B. Bishins

Martin,

We do not agree with your interpretation of the Rules. We will proceed with the cross examination of Mr. Bishins as planned for 8:00am tomorrow at your offices. However, this is without prejudice to our right to file a supplemental affidavit, which we reserve the right to do.

Best,

Nawel

---

**From:** Martin Low [mailto:Martin.Low@mcmillan.ca]  
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**To:** Nawel Bailey  
**Cc:** David Kent; Eric Vallieres; Jonathan Hood  
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