

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 under Section 103.1 of the *Competition Act* by John G. Annable for leave to make an application for an Order under subsection 77(1) of the *Competition Act*

BETWEEN

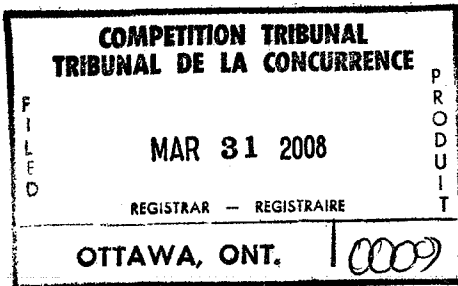
JOHN GUY ANNABLE

Applicant

- and -

CAPITAL SPORTS AND ENTERTAINMENT INC.

Respondent



AFFIDAVIT OF CYRIL M. LEEDER
Sworn March 28, 2008

I, CYRIL M. LEEDER, of the City of Ottawa, in the province of Ontario, MAKE OATH AND SAY:

1. I am the Chief Operating Officer of Capital Sports & Entertainment Inc. (incorrectly named as Capital Sports And Entertainment Inc.) ("Capital Sports"), and have personal knowledge of the matters set out below, except where stated to be based on information and belief, in which case I believe such statements to be true.

CAPITAL SPORTS & ENTERTAINMENT INC.

2. Capital Sports is an Ontario corporation, with its head office located in the City of Ottawa, Ontario.
3. Capital Sports is the owner of the National Hockey League ("NHL") franchise known as the Ottawa Senators (the "Senators"). The Senators play their home games at Scotiabank Place, Ottawa, Ontario. Capital Sports Properties Inc., an affiliate of Capital Sports, owns and operates

Scotiabank Place. In addition to being the home arena for the Senators, Scotiabank Place is used as a venue for other sporting and entertainment events, such as skating tours, music concerts and trade shows.

4. As the owner of the Senators, Capital Sports has the right to determine prices for Senators tickets, as well as whether to offer multi-game ticket packages to consumers.
5. Within the greater Ottawa area, sales of Senators tickets compete vigorously with the many other entertainment options available to consumers including, but not limited to, the Ottawa 67's (the local Ontario Hockey League team), the Gatineau Olympiques (the local Quebec Major Junior Hockey League team), concerts, theatres, National Arts Centre events, CentrepoinTE Theatre events, the Casino du Lac-Leamy located in Gatineau, Quebec, as well as various other venues such as restaurants, sports bars, movie theatres, etc.
6. Sales of Senators tickets also compete with sales of tickets to Montreal Canadiens games, as well as Toronto Maple Leaf games. My understanding is that Ottawa residents regularly travel to either or both Montreal or Toronto for the purposes of viewing NHL hockey games and *vice versa*.
7. In short, sales of Ottawa Senators tickets represent only a small percentage of the overall entertainment market.
8. Capital Sports decided to offer consumers packages of tickets for multiple games not only to help sales, but also to thwart unauthorized resellers (commonly referred to as "scalpers") from purchasing the available tickets to games between the Senators and the more popular NHL teams for the purposes of reselling them to consumers at inflated prices.
9. It is my understanding that scalpers often resell single tickets to high-demand games at prices in excess of the price of the multi-game ticket packages offered by Capital Sports.

THE CONDUCT COMPLAINED OF

10. It is difficult to determine from materials filed by Mr. Annable the nature of the allegations being made against Capital Sports with respect to its decision to offer multi-game packages.
11. From the February 7, 2008 Ottawa Citizen article titled "*Ticket Policy Frustrates Sens Fans*" attached to Mr. Annable's Notice of Application for Leave as Schedule "A", it appears that Mr. Annable is under the misconception that consumers who wished to view the Senators games against any of the Montreal Canadiens (February 9, 2008), the Pittsburgh Penguins (March 1, 2008) or the Toronto Maple Leafs (March 22, 2008), could only do so if they purchased a multi-game ticket package. Simply stated, this was not the case.
12. Contrary to Mr. Annable's erroneous perception regarding the availability of single tickets to the three games at issue, Capital Sports' records indicate that multi-game ticket packages accounted for only between approximately 3% and 4.9% of the total number of tickets sold for those games. These figures do not include either box tickets or complimentary tickets given out by Capital Sports. The vast majority of consumers who attended the games in question obtained their tickets other than by purchasing a multi-game ticket package from Capital Sports.

13. In addition to the various ways in which Capital Sports makes Senators tickets available to consumers, other than through the sale of multi-game ticket packages, single-game tickets to Senators games (including the three games at issue) can be purchased through capitaltickets.ca, an affiliate of Capital Sports and authorized sales agency for Senators tickets. In addition to selling Senators tickets, capitaltickets.ca provides a service called the "Senators Ticket Marketplace", which allows Senators season ticket holders to sell unwanted tickets to the public for the face-value of the ticket (people wishing to sell their Senators tickets through the Senators Ticket Marketplace cannot mark-up the price of their tickets).

CAPITAL SPORTS' PRIOR DEALINGS WITH MR. ANNABLE

- 14. These proceedings are not the first time that Mr. Annable has confronted Capital Sports. In fact, Mr. Annable has precipitated several confrontations with Capital Sports over the past year or so.
- 15. Without getting into specific details, over the past year or so, Mr. Annable has: (i) unsuccessfully attempted to obtain employment as a marketing liaison for Capital Sports, (ii) driven his vehicle in restricted areas of Scotiabank Place creating a dangerous situation for the public, (iii) attempted to impersonate a member of the press at a concert held at Scotiabank Place, (iv) accessed restricted areas of Scotiabank Place without authorization, as well as (v) attempted to re-enter Scotiabank Place after having been ejected by security personnel.
- 16. In addition to the incidents discussed above, Mr. Annable has repeatedly attempted to market unauthorized products both at Senators games and through the Internet that make use of Senators and NHL trademarks without authorization. In addition, Mr. Annable has made misrepresentations to the public suggesting that he was, or was about to become, an official licensee for the NHL and the Senators.
- 17. Despite several verbal warnings to cease his unauthorized use of the Senators and NHL trademarks, Mr. Annable persisted to the point where Mr. Tom Prochnow, Vice-President, Legal and Business Affairs, NHL Enterprises, L.P. felt it was necessary to send a formal "cease and desist" letter to Mr. Annable. A true copy of the letter is attached to this Affidavit as Exhibit "A".
- 18. I swear this affidavit in support of Capital Sports' response to Mr. Annable's Application for Leave to make application for an Order under subsection 77(1) of the *Competition Act*.

SWORN BEFORE ME at the City of Ottawa,)
in the Province of Ontario this 28th day of)
March, 2008.)
)
)

Rhonda Alexis Wip
A Commissioner for Taking Affidavits

Cyril M. Leeder
Cyril M. Leeder

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Applicant

- and -

CAPITAL SPORTS AND ENTERTAINMENT INC.

Respondent

AFFIDAVIT OF CYRIL M. LEEDER
Sworn March 28, 2008

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Counsel for the Respondent

This is Exhibit "A" referred to in the Affidavit
of Cyril M. Leeder sworn before me at the
City of Ottawa, in the Province of Ontario this
28th day of March, 2008

Rhonda Alessi Wip

A Commissioner of Taking Affidavits

Tom
Prochnow/NYC/NHL

To 06/01/2007 04:45 PM guy.annable@sympatico.ca

cc

Subject NHL Trademark Infringement

Dear Mr. Annable:

NHL Enterprises, L.P., ("NHLE") is the licensing and marketing arm of the National Hockey League and its thirty member clubs, including the Ottawa Senators. We are responsible for trademark enforcement efforts on their behalf.

It has come to our attention that you are marketing your company, My Cell Wrap, on the website SensNation.com and elsewhere in a way that suggests that you are, or are about to become, an official licensee of NHLE and/or the Ottawa Senators. As you are well aware, this is not the case, and this has repeatedly been made clear to you by a number of different representatives of NHLE and the Senators, including Angie Andreou and Jeff Kyle. Moreover, the visual materials you have been using to promote your company and its products include a number of logos and other trademarks that belong to the Ottawa Senators and/or the National Hockey League, including the image of the Stanley Cup. You are not authorized to use these logos on your products or for any other commercial purposes, and such uses constitute trademark infringement and passing off under the Trade-Marks Act.

As a result, we must demand that you immediately:

- (1) cease and desist from all unauthorized commercial uses of logos and other trademarks that belong to the Ottawa Senators and/or the National Hockey League, including your uses on the website SensNation.com and on all other marketing materials;
- (2) cease and desist from all distribution and/or sale of unauthorized commercial products (including "free samples") that incorporate logos and other trademarks of the Ottawa Senators and/or the National Hockey League, either at Scotiabank Place or elsewhere.

Thank you in advance for your cooperation.

Tom Prochnow
Vice President, Legal and Business Affairs NHL Enterprises, L.P.

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